

ERGS, INC. v. AMCO Insurance Company (“Amco”) (erroneously sued and served as “Nationwide”)

Case No.

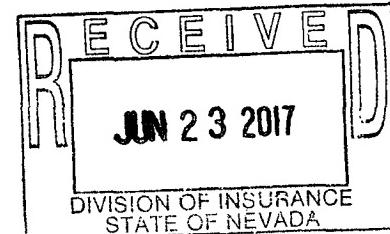
EXHIBIT A

Complaint *Ergs, Inc. v. Nationwide; Roe Entities I-X*
Second Judicial District Court of Nevada In and For the County of Washoe,
Court Case Number CV17-01040

Bates Nos. PLO00001 - PL00065

FILED
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9 **IN THE SECOND JUDICIAL DISTRICT COURT OF**
10 **THE STATE OF NEVADA**
11 **IN AND FOR THE COUNTY OF WASHOE**

12 ERGS, INC.

13 Plaintiff,

14 v. Case No.: CV17-01040

15 NATIONWIDE; ROE Entities I-X;

16 Defendant.

17 **COMPLAINT**

18 (Exemption from Arbitration Requested)

19 COMES NOW, Plaintiff ERGS, INC., by and through its counsel of record,
20 Patrick R. Millsap, Esq. and F. McClure Wallace, Esq., and hereby complains,
21 asserts and alleges the following against Nationwide:

22 **PARTIES**

- 23 1. ERGS, INC. ("ERGS") is a domestic corporation incorporated under the laws
24 of the State of Nevada and registered as Entity Number C602-1959 with a Nevada
25 Business ID of NV19591000465. See Exhibit 1.
- 26 2. Nationwide Mutual Insurance Company provides insurance and financial
27 services in the State of Nevada under the service mark "Nationwide", and is

1 registered with the Nevada Secretary of State as Entity Number E0652352014-9.

2 | See Exhibit 2.

3 3. ERGS does not yet know the true names and capacities of the Defendants
4 sued herein as ROE Entities I-X and, therefore, sues these Defendants under such
5 fictitious names. ERGS will amend this Complaint to allege the true names and
6 capacities of these ROE Defendants when ascertained. ERGS is informed and
7 believes, and therefore alleges, that each fictitiously named Defendant is
8 responsible for the failure to provide the required insurance coverage to ERGS as
9 alleged below. Due to such failure, ERGS suffered extensive damages in excess of
10 \$50,000.00. Because these fictitious Defendants are in some manner responsible
11 for the failure to provide the required insurance coverage to ERGS, they are equally
12 responsible for the resulting damages.

VENUE

14 4. Venue is proper in the Second Judicial District Court of the State of Nevada,
15 In and For the County of Washoe, under NRS 13.010(1) because Nationwide
16 contracted to perform insurance services for ERGS in Washoe County, Nevada.

SUBJECT MATTER JURISDICTION

18 5. The Nevada Constitution confers original and appellate subject matter
19 jurisdiction upon the district courts. *Morrison v. Beach City LLC*, 116 Nev. 34, 37,
20 991 P.2d 982, 983 (2000). The constitution provides district courts do not have
21 original jurisdiction over actions that fall within the original jurisdiction of the
22 justices' courts. *Id.*, see also Nev. Const. art. 6, § 6. Since this matter does not fall
23 within the original jurisdiction of the justices' courts, this Court has subject matter
24 jurisdiction over this dispute.

FACTUAL BACKGROUND

26 | I. FACTS UNDERLYING THE LOSS

27 6. ERGS is a Nevada business engaged in the lawful development and
28 management of real property.

1 7. ERGS currently, and at the time of the loss, owned, managed, and
2 maintained the real property commonly known as 7350 Silver Lake Rd. Reno,
3 Nevada 89506 (the "Property").

4 8. The Property is an apartment complex in the City of Reno, County of Washoe,
5 State of Nevada.

6 9. ERGS purchased insurance from Nationwide to cover the Property by and
7 through ERGS's insurance broker, LP Services Inc. ("LP"). A copy of the
8 applicable insurance policy purchased by ERGS from Nationwide covering the
9 Property is attached hereto as **Exhibit 3**.

10 10. Regarding the loss at issue, a family member of an apartment tenant visited
11 the ERGS management office to report water damage in a unit. Upon responding to
12 the Property to inspect the water damage, ERGS found the affected apartments to
13 be 15F and 15H (the "Apartments") located on the Property.

14 11. Upon information and belief, the plumbing lines connecting the Apartments
15 experienced a blockage causing water to flood the Apartments.

16 12. The blockage was partially visible from a toilet within one of the Apartments.

17 13. The water caused extensive damage to the Apartments, as well as, personal
18 property within the Apartments.

19 14. ERGS began a thorough investigation of the cause of the blockage within the
20 plumbing lines connecting the Apartments.

21 15. ERGS technicians succeeded in removing feminine hygiene products and
22 moist wipes from the plumbing system, which were partially visible from the toilet,
23 thereby alleviating the obstruction in the plumbing line.

24 16. Of note, the blockage in the plumbing system connecting the Apartments was
25 not in the sewer main operated by the City of Reno and/or Washoe County.

26 17. The blockage that caused the loss at issue was within the boundary and
27 footprint of the Property.

28

1 18. After ERGS technicians removed the blockage from the plumbing system,
2 ERGS began the process of reporting the loss to Nationwide to cover the damages.

3 **II. NATIONWIDE'S REFUSAL TO PROVIDE FULL POLICY COVERAGE**

4 19. ERGS reported the loss to Nationwide by and through its insurance broker
5 LP.

6 20. LP then followed the proper reporting and notice procedures to advise
7 Nationwide of the loss and ERGS's corresponding demand for coverage.

8 21. Nationwide conducted a brief investigation of the claim through adjuster
9 Brandon Ashwood, who prepared a cost of repair estimate after observing the
10 damages.

11 22. Of import, Nationwide did not hire a plumbing expert or competent
12 technician to investigate the source and cause of the obstruction in the plumbing
13 system.

14 23. Moreover, Nationwide did not retain a plumbing expert or technician to
15 determine where the blockage was located in relation to the sewer main operated by
16 the City and/or County versus the plumbing system located within the footprint of
17 the Property.

18 24. Rather, ERGS reported the blockage occurred in the plumbing system within
19 the footprint of the Property, and this fact was never investigated, challenged, or
20 disputed by Nationwide and its representatives.

21 25. After submission of the claim, Nationwide determined the loss fit within an
22 exclusion to full policy coverage found in Section B(1)(g)(3) of the policy. See
23 **Exhibit 3**.

24 26. Section B(1)(g)(3) of the policy excluded coverage for damages caused by
25 "water that backs up or overflows or is otherwise discharged from a sewer, drain,
26 sump, sump pump, or related equipment, except as provided under the Back Up Or
27 Sewer Or Drain Water Damage Additional Coverage". See **Exhibit 3**.

28

1 27. Pursuant to the last clause of the exclusion, the Policy provided additional
2 coverage of \$5,000.00 for losses fitting within the "Back Up of Sewer and Drain
3 Water" exclusion. *See Exhibit 3.*

4 28. Thus, Nationwide concluded its sole obligation to its insured, ERGS, was to
5 pay \$5,000.00 in additional coverage under the "Back Up Of Sewer and Drain
6 Water" additional coverage declaration to the policy. *See Exhibit 3.*

7 29. Nationwide denied any obligation to provide full coverage under the policy
8 based on exclusion B(1)(g)(3).

9 30. The \$5,000.00 in additional coverage was insufficient to cover the damages
10 incurred by ERGS caused by the loss, which exceeded \$50,000.00 subject to proof at
11 trial.

12 31. ERGS expressed concern to its insurance broker, LP, regarding Nationwide's
13 application of the policy exclusion to avoid full coverage of the claim.

14 32. LP undertook an investigation of the policy to assess the applicable insurance
15 coverage on behalf of LP's client, ERGS.

16 33. After researching the relevant policy language, LP drafted correspondence
17 dated September 8, 2016 to Nationwide indicating the "Back Up of Sewer and Drain
18 Water" exclusion in the policy did not apply to this loss. *See Exhibit 4.*

19 34. LP indicated the policy exclusion did not include damages flowing from an
20 obstructed plumbing line within the insured's property boundary. *See Exhibit 4.*

21 35. LP cited case law supporting its interpretation of the policy. *See Exhibit 4.*

22 36. Brandon Ashwood replied to LP's correspondence by indicating the exclusion
23 to full coverage in Section B(1)(g)(3) applied, thereby limiting coverage to the
24 \$5,000.00 in additional coverage for the "Back Up of Sewer and Drain Water". *See*
25 **Exhibit 4.**

26 37. However, Mr. Ashwood, nor any other representative of Nationwide, offered
27 applicable law supporting Nationwide's application of the "Back Up of Sewer and

28

1 Drain Water" exclusion, which NRS 686A.310(1)(n) required, despite LP presenting
2 the case law requiring Nationwide to cover the loss.

3 38. A thorough review of the policy language demonstrates Nationwide has a
4 duty to provide full policy coverage for loss caused by an obstruction in the
5 plumbing system within the footprint of the Property.

6 **III. THE RELEVANT POLICY PROVISIONS**

7 39. Nationwide did not dispute this loss entailed "direct physical loss of or
8 damage to Covered Property" as defined by the policy.

9 40. Rather, Nationwide claimed the loss was not a "Covered Cause of Loss".

10 41. A Covered Cause of Loss is defined in Section A.3. of the policy, and states a
11 Covered Cause of Loss is direct physical loss that is not excluded or limited by the
12 policy.

13 42. In other words, Nationwide is contractually obligated to provide full policy
14 coverage for direct physical loss or damage to covered property unless the loss is
15 excluded or limited by the terms of the policy.

16 43. Nationwide asserted the loss is not a "Covered Cause of Loss" because
17 ERGS's loss is excluded from full policy coverage by Section B(1)(g)(3) of the policy.

18 44. Section B(1)(g)(3) of the policy states:

19 **B. Exclusions**

20 1. We will not pay for loss or damage caused directly or indirectly by any of
21 the following. Such loss or damage is excluded regardless of any other cause
22 or event that contributes concurrently or in any sequence to the loss. These
23 exclusions apply whether or not the loss event results in widespread damage
24 or affects a substantial area.

25 **g. Water**

26 (3) Water that backs up or overflows or is otherwise discharged
27 from a sewer, drain, sump, sump pump or related equipment,

1 except as provided under the Back Up Of Sewer Or Drain Water
2 Damage Additional Coverage;
3 (the "Sewer and Drain Exclusion"). *See Exhibit 3.*

4 45. Pursuant to the language of the Sewer and Drain Exclusion, the policy
5 contained a provision for additional coverage in Section A(5)(r)(2) & (3), which
6 states:

7 We will pay for loss of or damage to Covered Property
8 caused by water that backs up or overflows from a sewer
9 or drain, sump pump well or similar device designed to
10 prevent overflow seepage or leakage of subsurface water.
11 HOWEVER, we will not pay for loss or damage that
12 results from sewer back-up or sump pump overflow that
13 occurs during the period beginning 10 days before and
14 ending 10 days after a "flood" on the described premises.
15 The most we will pay for loss or damage under this
16 coverage is:

17 (a) \$5,000 per building; or
18 (b) \$25,000 in any one policy period, regardless of the
19 number of losses;
20 unless a higher Limit of Insurance for Back Up Of Sewer
21 Or Drain Water Damage is shown in the Declarations.

22 *See Exhibit 3.*

23 46. Under the Sewer and Drain Exclusion and the corresponding additional
24 coverage provision in Section A(5)(r)(2) & (3) of the policy, Nationwide limited its
25 coverage to \$5,000.00 for the loss at issue.

26 47. Nationwide breached its insurance contract with ERGS, among the other
27 legal violations listed below, by denying full policy coverage for the loss when the
28

1 case law and relevant policy provisions require Nationwide to provide full coverage
2 ERGS's claim.

3

4 **FIRST CAUSE OF ACTION**

5 **(BREACH OF INSURANCE CONTRACT)**

6 48. ERGS incorporates and includes by reference herein paragraphs 1 – 47 of this
7 Complaint.

8 49. Nationwide and ERGS formed a valid contract for Nationwide to provide
9 ERGS insurance covering the Property.

10 50. ERGS performed the terms of the insurance contract, or was excused from
11 performance of the terms of the insurance contract.

12 51. Nationwide breached the terms of the insurance contract and corresponding
13 policy by failing to provide full coverage for ERGS's loss at the Property as required
14 by the terms of the contract and corresponding policy provisions.

15 52. ERGS suffered damages caused by Nationwide's breach of the insurance
16 contract in excess of **\$50,000.00**.

17 53. ERGS incurred attorney's fees and costs as a form of special damages
18 resulting from Nationwide's breach of the insurance contract.

19 **SECOND CAUSE OF ACTION**

20 **(UNFAIR PRACTICES IN SETTLING CLAIMS – BREACH OF NRS 686A.310)**

21 54. ERGS incorporates and includes by reference herein paragraphs 1 – 53 of this
22 Complaint.

23 55. Based on the facts stated above, and incorporated herein, Nationwide
24 committed a breach of NRS 686A.310(1) by committing unfair practices in settling
25 ERGS's claim.

26 56. Specifically, Nationwide failed to effectuate a prompt, fair, and equitable
27 settlement with ERGS after Nationwide's liability for the claim was reasonably
28 clear, as required by NRS 686A.310(1)(e). Specifically, Nationwide's liability to pay

1 ERGS's claim became reasonably clear after multiple correspondence from LP to
2 Nationwide established ERGS's claim was not excluded from coverage under the
3 Sewer and Drain Exclusion. Moreover, ERGS retained counsel to draft a letter
4 informing Nationwide of its duty to provide coverage for the claim based upon the
5 facts of the loss and applicable case law regarding the Sewer and Drain Exclusion.
6 In response, Nationwide did not indicate the facts provided by ERGS, and
7 applicable case law mandating coverage for the claim provided by ERGS, were
8 inaccurate. Nationwide did not set forth additional facts or relevant case law that
9 would remove ERGS's claim from coverage. Rather, Nationwide denied full policy
10 coverage for ERGS's loss without providing sufficient factual or legal information to
11 ERGS in support of the denial. The inability of Nationwide to set forth sufficient
12 factual and legal bases for denying ERGS's claim establishes ERGS's claim was
13 meritorious and, therefore, evidences Nationwide's failure to cover the claim when
14 its liability was reasonably clear.

15 57. Nationwide committed a breach of NRS 686A.310(1)(n) by failing to provide
16 the applicable law upon which it denied ERGS's claim. Specifically, NRS
17 686A.310(1)(n) requires the insurer to provide a reasonable explanation of the
18 applicable law upon which it premised the denial of the insured's claim.
19 Nationwide failed to provide the applicable law upon which it relied in denying
20 ERGS's claim. ERGS's insurance broker, LP, requested Nationwide provide the
21 applicable law that merited denial of ERGS's claim. Nationwide did not provide the
22 applicable law in response to LP's request. ERGS demanded Nationwide provide
23 the law supporting denial of its claim as part of a demand letter for coverage to
24 Nationwide and, still, Nationwide failed to provide the law supporting denial of
25 ERGS's claim. Therefore, Nationwide committed a violation of NRS 686A.310(1)(n)
26 by failing to provide the law supporting denial of ERGS's claim, even after multiple
27 requests made by ERGS through its legal counsel and LP.

28

1 58. Nationwide committed a breach of NRS 686A.310(1)(l) by using one portion
 2 of the policy to influence coverage and settlement under a separate portion of the
 3 policy. Specifically, Nationwide unlawfully used Sections A(5)(r)(2) & (3) of the
 4 policy to deny full coverage for the loss under the policy. In other words,
 5 Nationwide improperly used an additional coverage provision to limit Nationwide's
 6 financial responsibility to ERGS to the amount of the additional coverage, rather
 7 than provide full policy coverage for the loss as required by the terms of the policy.
 8 Such manipulation of one provision of the policy against another to limit the
 9 financial exposure of the insurer constitutes an unfair practice in settling claims of
 10 the insured under NRS 686A.310(1).

11 59. NRS 686A.310(2) states an insurer is liable to its insured for any damages
 12 sustained by the insured as a result of the commission of any act set forth in NRS
 13 686A.310(1). Therefore, Nationwide is statutorily liable for the damages it caused
 14 ERGS flowing from Nationwide's violations of NRS 686A.310(1).

15 60. ERGS incurred over \$50,000.00 in damages as a result of Nationwide's
 16 unfair settling of claims.

17 61. Nationwide's breaches of NRS 686A.310(1) have forced ERGS to incur
 18 attorney's fees and costs as a form of special damages in this matter.

19 THIRD CAUSE OF ACTION

20 (BREACH OF FIDUCIARY DUTY BETWEEN INSURER & INSURED)

21 62. ERGS incorporates and includes by reference herein paragraphs 1 – 61 of this
 22 Complaint.

23 63. Nationwide had a fiduciary relationship with, and duty to, ERGS because
 24 Nationwide was under a duty to act for, or to give advice for, the benefit of ERGS
 25 upon matters within the scope of its fiduciary relationship, in this instance
 26 insurance coverage for the Property.

27 64. Nationwide breached its fiduciary duty by committing tortious conduct
 28 against Nationwide as alleged in this Complaint, including but not limited to,

1 failing to comply with reasonable requests from ERGS to provide information, law,
2 and facts relevant to Nationwide's denial of full policy coverage for the claim. See
3 *Stalk v. Mushkin*, 125 Nev. 21, 28, 199 P.3d 838, 843 (2009); *see also Powers v.*
4 *United Servs. Auto. Ass'n*, 114 Nev. 690, 700, 962 P.2d 596, 602 (1998), *opinion*
5 *modified on denial of reh'g*, 115 Nev. 38, 979 P.2d 1286 (1999).

6 65. ERGS suffered damages greater than \$50,000.00 caused by Nationwide's
7 breach of fiduciary duty.

8 66. ERGS incurred attorney's fees and costs as a form of special damages because
9 of Nationwide's breach of fiduciary duty.

10 **FOURTH CAUSE OF ACTION**

11 **(BAD-FAITH REFUSAL TO PAY INSURANCE CLAIM)**

12 67. ERGS incorporates and includes by reference herein paragraphs 1 – 66 of this
13 Complaint.

14 68. Nationwide had a duty to provide full policy coverage for ERGS's claim.

15 69. Nationwide did not have a reasonable basis for disputing full policy coverage
16 for the claim, evidenced by Nationwide's inability to provide a legal basis or
17 sufficient factual basis for denial of full policy coverage on the claim.

18 70. Nationwide knew of, or recklessly disregarded, the fact that there was no
19 reasonable basis for denial of ERGS's claim for full policy coverage on the loss.

20 71. ERGS suffered damages in excess of \$50,000.00 resulting from Nationwide's
21 bad-faith refusal to pay ERGS's insurance claim.

22 72. ERGS incurred attorney's fees and costs as a form of special damages
23 resulting from Nationwide's bad-faith refusal to pay an insurance claim.

24 73. Nationwide is responsible for punitive or exemplary damages based on its
25 bad-faith refusal to pay ERGS's insurance claim.

26 **WHEREFORE**, ERGS prays for the following relief against Nationwide:

27 a) For damages as allowed by law and/or equity subject to proof at trial in
28 excess of \$50,000.00;

- 1 b) For punitive damages pursuant to the 2nd, 3rd and 4th Causes of Action
2 alleged herein;
3 c) For attorneys' fees as allowed by law and/or equity;
4 d) For costs as allowed by law and/or equity; and
5 e) For any other remedy or form of relief this Court deems just and
6 appropriate.

7 AFFIRMATION

8 The undersigned hereby affirms this document does not contain the social
9 security number or legally private information of any person.

10 DATED this 30th day of May, 2017.

11 By:/s/Patrick R. Millsap, Esq.

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15 Nevada Bar No.: 10264
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ERGS, INC. Plaintiff,

v.

NATIONWIDE; ROE Entities I-X;

Case No. CV17- 01040
Dept. 10

Exhibit	Description	Pages
1.	ERGS, Inc – NV Secretary of State	1
2.	Nationwide – NV Secretary of State	1
3.	Nationwide Insurance Policy	39
4.	LP correspondence dated	6

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Jacqueline Bryant

Clerk of the Court

Transaction# 6122344 : pmsewell

Exhibit “1”

EXHIBIT “1”

ERGS, INC.

Business Entity Information

Status:	Active	File Date:	5/11/1959
Type:	Domestic Corporation	Entity Number:	C602-1959
Qualifying State:	NV	List of Officers Due:	5/31/2017
Managed By:		Expiration Date:	
NV Business ID:	NV19591000465	Business License Exp:	5/31/2017

Additional Information

Central Index Key:

Registered Agent Information

Name:	GEORGE F. PEEK	Address 1:	9345 LEMMON DR
Address 2:		City:	RENO
State:	NV	Zip Code:	89506
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	
Mailing Zip Code:			
Agent Type:	Noncommercial Registered Agent		

Financial Information

No Par Share Count:	0	Capital Amount:	\$ 25,000.00
Par Share Count:	25,000.00	Par Share Value:	\$ 1.00

Officers

Include Inactive Officers

President - GEORGE F PEEK

Address 1:	9345 LEMMON DR	Address 2:	
City:	RENO	State:	NV
Zip Code:	89506	Country:	USA
Status:	Active	Email:	

Secretary - GREGORY F PEEK

Address 1:	9345 LEMMON DR	Address 2:	
City:	RENO	State:	NV
Zip Code:	89506	Country:	USA
Status:	Active	Email:	

Treasurer - GREGORY F PEEK

Address 1:	9345 LEMMON DRIVE	Address 2:	

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Exhibit “2”

EXHIBIT “2”

NATIONWIDE

Business Entity Information

Status:	Active	File Date:	12/23/2014
Type:	Service Mark	Entity Number:	E0652352014-9
Qualifying State:	OH	List of Officers Due:	
Managed By:		Expiration Date:	12/23/2019
Date of 1st use in Nevada:	10/19/1955	Date of 1st use Anywhere:	10/19/1955
Classification:	102		

Applicant

Name:	NATIONWIDE MUTUAL INSURANCE COMPANY	Address1:	ONE NATIONWIDE PLAZA 1-35-204
Address 2:		City:	COLUMBUS
State:	OH	Zip Code:	43215

Additional Information

Goods and Services: INSURANCE AND FINANCIAL SERVICES

Registered Agent Information

No Registered Agent associated with this company

Financial Information

No Par Share Count:	0	Capital Amount:	\$ 0
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No stock records found for this company

Officers

Include Inactive Officers

No active officers found for this company

Actions\Amendments

Action Type:	Mark Registration (5 yr Duration)		
Document Number:	20140823013-04	# of Pages:	3
File Date:	12/23/2014	Effective Date:	
(No notes for this action)			

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Jacqueline Bryant

Clerk of the Court

Transaction # 6122344 : pmsewell

Exhibit "3"

EXHIBIT "3"

BUSINESS OWNERS
PB 00 02 04 11

PREMIER BUSINESS OWNERS PROPERTY COVERAGE FORM

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PREMIER BUSINESS OWNERS PROPERTY COVERAGE FORM

Various provisions in this policy restrict coverage. Please read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insureds shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance. Other words and phrases that appear in quotation marks have special meaning. Please refer to Section H. PROPERTY DEFINITIONS.

A. COVERAGES

We will pay for direct physical loss of or damage to Covered Property at the described premises in the Declarations caused by or resulting from any Covered Cause of Loss.

1. COVERED PROPERTY

Covered Property includes Buildings as described under paragraph a. below, Business Personal Property as described under paragraph b. below, or both, depending on whether a Limit of Insurance is shown in the Declarations for that type of property. Regardless of whether coverage is shown in the Declarations for Buildings, Business Personal Property, or both, there is no coverage for property described under paragraph 2, PROPERTY NOT COVERED.

- a. **Buildings**, meaning the described buildings and structures at the described premises, including:
 - (1) Completed additions;
 - (2) Fixtures, including outdoor fixtures;
 - (3) Permanently installed:
 - (a) Machinery;
 - (b) Equipment; and
 - (c) Tanks, including pumps;
 - (4) Your personal property in apartments, rooms or common areas furnished by you as landlord;
 - (5) Personal property owned by you that is used to maintain or service buildings or structures or the premises, including:
 - (a) Fire extinguishing equipment;
 - (b) Outdoor furniture;
 - (c) Floor coverings;
 - (d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering; and
 - (e) Outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, mast and towers;
 - (6) If not covered by other insurance:

- (a) Additions under construction, alterations and repairs to the buildings or structures;
- (b) Materials, equipment, supplies and temporary structures, on or within 1,000 feet of the described premises, used for making additions, alterations or repairs to the buildings or structures; and
- (7) Garages, storage buildings, spas, swimming pools, fences, retaining walls or other appurtenant structures usual to your business, but only if:
 - (a) Coverage is not provided for such structures under the Appurtenant Structures Additional Coverage; and
 - (b) Such structures are then described in the Declarations.
- b. **Business Personal Property** located in or on the buildings at the described premises or in the open (or in a vehicle) within 1,000 feet of the described premises, consisting of the following:
 - (1) Personal property you own that is used in your business, including but not limited to furniture, fixtures, machinery, equipment and "stock";
 - (2) Personal property of others that is in your care, custody or control, except as otherwise provided in Condition 5. Loss Payment under Section E. PROPERTY LOSS CONDITIONS;
 - (3) Tenant improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:
 - (a) Made a part of the building or structure you occupy but do not own; and
 - (b) You acquired or made at your expense but cannot legally remove; and
 - (4) Leased personal property which you have a contractual responsibility to

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- (4) Leased personal property which you have a contractual responsibility to insure, unless otherwise provided for under paragraph (2) personal property of others above.
 - (5) Exterior building glass, if you are a tenant and no Limit of Insurance is shown in the Declarations for Building property. The glass must be owned by you or in your care, custody or control and you must be contractually obligated to repair or replace it. We will also pay for necessary repair or replacement of encasing frames.
- 2. PROPERTY NOT COVERED**
- Covered Property does not include:
- a. Aircraft, automobiles, motortrucks and other vehicles subject to motor vehicle registration;
 - b. "Money" or "securities" except as provided in:
 - (1) Money and Securities Additional Coverage;
 - (2) Computer Fraud And Funds Transfer Fraud Additional Coverage; or
 - (3) Employee Dishonesty under Section G. OPTIONAL COVERAGES;
 - c. Contraband, or property in the course of illegal transportation or trade;
 - d. Land (including land on which the property is located), water, growing crops;
 - e. Outdoor signs (other than signs attached to buildings), trees, shrubs, plants or lawns (other than "stock" of trees, shrubs or plants), all except as provided in the:
 - (1) Outdoor Signs Coverage Extension; or
 - (2) Outdoor Trees, Shrubs, Plants and Lawns Coverage Extension.
 - f. Watercraft (including motors, equipment and accessories) while afloat;
 - g. Gasoline or diesel fuel contained in above ground or underground storage tanks;
 - h. Property that is covered under another coverage form of this or any other policy in which it is more specifically described, except for the excess of the amount due (whether you can collect it or not) from that other insurance;
 - i. Grain, hay, straw or other crops while in the open;
 - j. Accounts, bills, food stamps, other evidences of debt, accounts receivable or "valuable papers and records"; except as otherwise provided in this policy;

- k. "Computer(s)" which are permanently installed or designed to be permanently installed in any aircraft, watercraft, motortruck or other vehicle subject to motor vehicle registration. This paragraph does not apply to "computer(s)" while held as "stock";
- l. "Electronic data", except as provided in the Electronic Data or Equipment Breakdown Additional Coverages. This paragraph l. does not apply to your "stock" of prepackaged software.

3. COVERED CAUSES OF LOSS

This Coverage Form insures against Risks Of Direct Physical Loss unless the loss is:

- a. Excluded in Section B. EXCLUSIONS;
- b. Limited in paragraph A.4. LIMITATIONS in this section; or
- c. Limited or excluded in Section E. PROPERTY LOSS CONDITIONS or Section F. PROPERTY GENERAL CONDITIONS.

4. LIMITATIONS

- a. We will not pay for loss of or damage to:

- (1) Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through with the gases of combustion pass.

This limitation does not apply to loss or damage provided under the Equipment Breakdown Additional Coverage.

- (2) Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.

This limitation does not apply to loss or damage provided under the Equipment Breakdown Additional Coverage.

- (3) Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property. This limitation does not apply to Money and Securities Additional Coverage.

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- (4) Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.
This limitation does not apply to loss or damage provided under the Unauthorized Business Card Use or Computer Fraud.
- (5) Fences, spas, outdoor swimming pools and related equipment, retaining walls, pavements, bulkheads, pillars, wharves or docks caused by freezing or thawing, impact of watercraft, or by the pressure or weight of snow, sleet, ice or water whether driven by wind or not.
- (6) The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:
- (a) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
 - (b) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.
- b. We will not pay for loss of or damage to the following types of property unless caused by the "specified causes of loss" or building glass breakage:
- (1) Fragile articles such as glassware, statuary, marbles, chinaware and porcelains, if broken. This limitation does not apply to:
 - (a) Glass that is part of the exterior or interior of a building or structure;
 - (b) Containers of property held for sale; or
 - (c) Photographic or scientific instrument lenses.
- c. For loss or damage by theft, the following types of property are covered only up to the limits shown:
- (1) \$2,500 for furs, fur garments and garments trimmed with fur.
 - (2) \$5,000 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$250 or less per item.
- (3) \$2,500 for patterns, dies, molds and forms.

5. ADDITIONAL COVERAGES

a. Debris Removal

- (1) We will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.
- (2) The most we will pay under this Debris Removal Additional Coverage is:
- (a) 25% of the amount we pay for the direct physical loss of or damage to Covered Property; plus
 - (b) The deductible in this policy applicable to that loss or damage.

This Debris Removal Additional Coverage will not increase the Limits of Insurance provided by this policy.

HOWEVER, this limitation does not apply to any additional debris removal limit provided in paragraph (4) below.

- (3) This Debris Removal Additional Coverage does not apply to costs to:
- (a) Extract "pollutants" from land or water;
 - (b) Remove, restore or replace polluted land or water; or
 - (c) Extract "pollutants" from Covered Property.

(4) If:

- (a) The sum of direct physical loss or damage and debris removal expense exceeds the Limit of Insurance; or
- (b) The debris removal expense exceeds the amount payable under the 25% Debris Removal coverage limitation in paragraph (2) above,

we will pay up to an additional \$25,000 for each location in any one occurrence under this Debris Removal Additional Coverage.

b. Preservation Of Property

- (1) If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay for any direct physical loss of or damage to that property.

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- (a) While it is being moved or while temporarily stored at another premises; and
- (b) Only if the loss or damage occurs within 45 days after the property is first moved.
- (2) This Preservation of Property Additional Coverage will not increase the Limits of Insurance provided by this policy.
- c. **Fire Department Service Charge**
 - (1) When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$25,000 for your liability for fire department service charges:
 - (a) Assumed by contract or agreement prior to loss; or
 - (b) Required by local ordinance.
 - (2) The limit for this Fire Department Service Charge Additional Coverage is in addition to the Limits of Insurance.
 - (3) No deductible applies to this Fire Department Service Charge Additional Coverage.
- d. **Fire Extinguisher Recharge**
 - (1) We will pay the expense you incur to recharge portable fire extinguishers when used to combat a covered fire.
 - (2) This Fire Extinguisher Recharge Additional Coverage is not subject to the Limits of Insurance.
 - (3) No deductible applies to this Fire Extinguisher Recharge Additional Coverage.
- e. **Collapse**
The coverage provided under this Collapse Additional Coverage applies only to an abrupt collapse as described and limited in paragraphs e.(1) through e.(7).
 - (1) For the purpose of this Collapse Additional Coverage abrupt collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose.
 - (2) We will pay for direct physical loss of or damage to Covered Property, caused by abrupt collapse of a building or any part of a building that is insured under this policy or that contains Covered Property insured under this policy, if such collapse is caused by one or

more of the following:

- (a) Building decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;
- (b) Insect or vermin damage that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;
- (c) Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs during the course of the construction, remodeling or renovation.
- (d) Use of defective materials or methods in construction, remodeling or renovation if the abrupt collapse occurs after the construction, remodeling or renovation is complete, but only if the collapse is caused in part by:
 - (i) A cause of loss listed in paragraph (2)(a) or (2)(b);
 - (ii) One or more of the "specified causes of loss";
 - (iii) Breakage of building glass;
 - (iv) Weight of people or personal property; or
 - (v) Weight of rain, snow, sleet or ice, that collects on a roof.
- (3) This Collapse Additional Coverage does not apply to:
 - (a) A building or any part of a building that is in danger of falling down or caving in;
 - (b) A part of a building that is standing, even if it has separated from another part of the building; or
 - (c) A building that is standing or any part of a building that is standing, even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.
- (4) With respect to the following property:
 - (a) Outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, mast or towers;
 - (b) Awnings, gutters and downspouts;
 - (c) Yard fixtures;
 - (d) Outdoor swimming pools;
 - (e) Fences;

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- (f) Bulkheads, pilings, piers, wharves and docks;
 - (g) Beach or diving platforms or appurtenances;
 - (h) Retaining walls; and
 - (i) Walks, roadways and other paved surfaces;
- if an abrupt collapse is caused by a cause of loss listed in (2)(a) through (2)(d) above, we will pay for loss or damage to that property in (a) through (i) above only if such loss or damage is a direct result of abrupt collapse of a building insured under this policy and the property is Covered Property under this policy.
- (5) If personal property abruptly falls down or caves in and such collapse is not the result of abrupt collapse of a building or any part of a building, we will pay for loss of or damage to Covered Property caused by such collapse of personal property only if:
- (a) The collapse of personal property was caused by a Cause of Loss listed in (2)(a) through (2)(d) above;
 - (b) The personal property which collapses is inside a building; and
 - (c) The property which collapses is not of a kind listed in paragraph (4), regardless of whether that kind of property is considered to be personal property or real property.
- The coverage stated in this paragraph (5) does not apply to personal property if marring and/or scratching is the only damage to that personal property caused by collapse.
- (6) This Collapse Additional Coverage does not apply to personal property that has not abruptly fallen down or caved in, even if the personal property shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.
- (7) This Collapse Additional Coverage will not increase the Limits of Insurance provided in this policy.
- f. Water Damage, Other Liquids, Powder Or Molten Material Damage**
- (1) If a covered loss to which this insurance applies was caused by or resulted from water or other liquid, powder or molten material, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes.
- (2) We will not pay the cost to repair any defect that caused the loss or damage except as provided in Equipment Breakdown Additional Coverage; but we will pay the cost to repair or replace damaged parts of fire extinguishing equipment if the damage:
- (a) Results in discharge of any substance from an automatic fire protection system; or
 - (b) Is directly caused by freezing.
- (3) This Water Damage Additional Coverage will not increase the Limits of Insurance provided in this policy.
- g. Business Income**
- (1) Business Income with Ordinary Payroll Limitation**
- (a) We will pay for the actual loss of "business income" you sustain due to the necessary suspension of your "operations" during the "period of restoration". The suspension must be caused by direct physical loss of or damage to property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 1,000 feet of the site at which the described premises are located.
 - (b) With respect to the requirements set forth in the preceding paragraph, if you occupy only part of the site at which the described premises are located, your premises means:
 - (i) The portion of the building which you rent, lease or occupy; and
 - (ii) Any area within the building or on the site at which the described premises are located, if that area services, or is used to gain access to, the described premises.

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(c) We will only pay for loss of "business income" that you sustain during the "period of restoration" and that occurs within the number of consecutive months shown in the Declarations for Business Income — Actual Loss Sustained after the date of direct physical loss or damage. We will only pay for "ordinary payroll expenses" for the number of days shown in the Declarations for Ordinary Payroll Limit following the date of direct physical loss or damage.

(2) **Extended Business Income**

- (a) If the necessary suspension of your "operations" produces a "business income" loss payable under this policy, we will pay for the actual loss of "business income" you incur during the period that:
- (i) Begins on the date property except finished stock is actually repaired, rebuilt or replaced and "operations" are resumed; and
 - (ii) Ends on the earlier of:
 - i. The date you could restore your "operations", with reasonable speed, to the level which would generate the "business income" amount that would have existed if no direct physical loss or damage had occurred; or
 - ii. Sixty (60) consecutive days after the date determined in (2)(a)(i) above, unless a greater number of days is shown for Extended Business Income Increased Period of Indemnity in the Declarations at that described premises.

HOWEVER, Extended Business Income does not apply to loss of "business income" incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

- (b) Loss of a "business income" must be caused by direct physical loss or damage at the described

premises caused by or resulting from any Covered Cause of Loss.

- (3) This Business Income Additional Coverage is not subject to the Limits of Insurance.

h. Extra Expense

- (1) We will pay necessary "extra expense" you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss of or damage to property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 1,000 feet of the site at which the described premises are located.
- (2) With respect to the requirements set forth in the preceding paragraph, if you occupy only part of the site at which the described premises are located, your premises means:
- (a) The portion of the building which you rent, lease or occupy; and
 - (b) Any area within the building or on the site at which the described premises are located, if that area services, or is used to gain access to, the described premises.
- (3) We will only pay for "extra expense" that occurs within the number of consecutive months shown in the Declarations for Extra Expense after the date of direct physical loss or damage.
- (4) This Extra Expense Additional Coverage is not subject to the Limits of Insurance.

i. Pollutant Clean Up And Removal

- (1) We will pay your expense to extract "pollutants" from land, water or Covered Property at the described premises if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.

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- (2) This Pollutant Clean Up And Removal Additional Coverage does not apply to:
 - (a) Costs to test for, monitor or assess the existence, concentration or effects of "pollutants"; or
 - (b) Any penalties or assessments that may be charged against you due to any statute, regulation or ordinance.
- But we will pay for testing which is performed in the course of extracting the "pollutants" from land or water.
- (3) The most we will pay for each location under this Pollutant Clean Up And Removal Additional Coverage is \$25,000 for the sum of all such expenses arising out of Covered Causes of Loss occurring during each separate 12 month period of this policy.
- (4) The limit for this Pollutant Clean Up And Removal Additional Coverage is in addition to the Limits of Insurance.

j. **Civil Authority**

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority coverage for "business income" will begin 72 hours after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to 30 days after coverage begins.

Civil Authority coverage for necessary "extra expense" will begin immediately

after the time of the first action of civil authority that prohibits access to the described premises and will end:

- (1) 30 days after the time of that action; or
- (2) When your Civil Authority coverage for "business income" ends;

whichever is later.

The definitions of Business Income and Extra Expense contained in the Business Income and Extra Expense Additional Coverages also apply to this Civil Authority Additional Coverage. The Civil Authority Additional Coverage is not subject to the Limits of Insurance.

k. **Money Orders And Counterfeit Money**

- (1) We will pay for loss resulting directly from your having accepted in good faith, in exchange for merchandise, "money" or services:
 - (a) Money orders issued by any post office, express company or bank that are not paid upon presentation; or
 - (b) "Counterfeit money" that is acquired during the regular course of business.
- (2) The most we will pay for any loss under this Money Orders And Counterfeit Money Additional Coverage is \$5,000.
- (3) The limit for this Money Orders And Counterfeit Money Additional Coverage is in addition to the Limits of Insurance.

l. **Forgery And Alteration**

- (1) We will pay for loss resulting directly from forgery or alteration of, any check, draft, promissory note, bill of exchange or similar written promise of payment in "money" that you or your agent has issued, or that was issued by someone who impersonates you or your agent.
- (2) If you are sued for refusing to pay the check, draft, promissory note, bill of exchange or similar written promise of payment in "money", on the basis that it has been forged or altered, and you have our written consent to defend against the suit, we will pay for any reasonable legal expenses that you incur in that defense.
- (3) For the purpose of this coverage, check includes a substitute check as

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- defined in the Check Clearing for the 21st Century Act, and will be treated the same as the original it replaced.
- (4) The most we will pay for any loss, including legal expenses, under this Additional Coverage is \$10,000, unless a higher Limit of Insurance is shown in the Declarations.
 - (5) The limit for this Forgery And Alteration Additional Coverage is in addition to the Limits of Insurance.
- m. **Increased Cost Of Construction – Damaged Property**
- (1) This Additional Coverage applies only to buildings insured on a replacement cost basis.
 - (2) In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay the increased costs incurred to comply with enforcement of an ordinance or law in the course of repair, rebuilding or replacement of damaged parts of that property, subject to the limitations stated in paragraphs (3) through (9) of this Increased Cost Of Construction – Damaged Property Additional Coverage.
 - (3) The ordinance or law referred to in paragraph (2) of this Increased Cost Of Construction – Damaged Property Additional Coverage is an ordinance or law that regulates the construction or repair of buildings or establishes zoning or land use requirements at the described premises, and is in force at the time of loss.
 - (4) Under this Increased Cost Of Construction – Damaged Property Additional Coverage, we will not pay any costs due to an ordinance or law that:
 - (a) You were required to comply with before the loss, even when the building was undamaged; and
 - (b) You failed to comply with.
 - (5) Under this Increased Cost Of Construction – Damaged Property Additional Coverage, we will not pay for:
 - (a) The enforcement of any ordinance or law which requires demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or
 - due to the presence, growth, proliferation, spread or any activity of "fungi", wet rot or dry rot; or
 - (b) Any costs associated with the enforcement of an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "pollutants", "fungi", wet rot or dry rot.
 - (6) The most we will pay under this Increased Cost Of Construction – Damaged Property Additional Coverage, for each described building insured under this Coverage Form, is \$25,000.
- The limit for this Increased Cost Of Construction – Damaged Property Additional Coverage is in addition to the Limits of Insurance.
- (7) With respect to this Increased Cost Of Construction – Damaged Property Additional Coverage:
 - (a) We will not pay any costs:
 - (i) Until the property is actually repaired or replaced, at the same described premises or another premises; and
 - (ii) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.
 - (b) If the building is repaired or replaced at the same described premises, or if you elect to rebuild at another premises, the most we will pay for the Increased Cost of Construction is the increased cost of construction at the same described premises.
 - (c) If the ordinance or law requires relocation to another premises, the most we will pay for the Increased Cost of Construction is the increased cost of construction at the new premises for a building of like, kind and quality and of the same size and use.

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- (B) This Increased Cost Of Construction – Damaged Property Additional Coverage is not subject to the terms of the Ordinance or Law Exclusion, to the extent that such exclusion would conflict with the provisions of this Increased Cost Of Construction – Damaged Property Additional Coverage.

n. Equipment Breakdown

- (1) We will pay for direct physical loss of or damage to Covered Property caused by or resulting from an "accident" to "covered equipment". If an initial "accident" causes other "accidents", all will be considered one "accident". All "accidents" that are the result of the same event will be considered one "accident".
- (2) If a dollar deductible is shown in the declarations for this Equipment Breakdown Additional Coverage, we will first subtract the applicable deductible amount from any loss we would otherwise pay. We will then pay the amount of loss in excess of the applicable deductible up to the applicable limit for this coverage. If no dollar deductible is shown for Equipment Breakdown Additional Coverage, the Property Deductible shown in the Declarations applies.
- (3) The following coverages also apply to loss caused by or resulting from an "accident" to "covered equipment". These coverages do not provide additional amounts of insurance.

(a) **Expediting Expenses**

With respect to your damaged Covered Property, we will pay, up to \$50,000, the reasonable extra cost to:

- (i) Make temporary repairs; and
- (ii) Expedite permanent repairs or replacement.

(b) **Hazardous Substances**

We will pay for the additional cost to repair or replace Covered Property because of contamination by a "hazardous substance". This includes the additional expenses to clean up or dispose of such property.

This does not include contamination of "perishable

goods" by refrigerant, including but not limited to ammonia, which is addressed in (3)(c)(ii) below.

Additional costs mean those beyond what would have been required had no "hazardous substance" been involved.

The most we will pay for loss, damage or expense under this coverage, including actual loss of "business income" you sustain and necessary "extra expense" you incur is \$50,000.

(c) **Perishable Goods**

- (i) We will pay for physical damage to "perishable goods" due to spoilage.
- (ii) We will also pay for physical damage to "perishable goods" due to contamination from the release of refrigerant, including but not limited to ammonia.
- (iii) We will also pay necessary expenses you incur to reduce the amount of loss under this coverage. We will pay for such expenses to the extent that they do not exceed the amount of loss that otherwise would have been payable under this coverage.
- (iv) If you are unable to replace the "perishable goods" before its anticipated sale, the amount of our payment will be determined on the basis of the sales price of the "perishable goods" at the time of the "accident", less discounts and expenses you otherwise would have had. Otherwise our payment will be determined in accordance with Condition 5. Loss Payment under Section E. PROPERTY LOSS CONDITIONS.

The most we will pay for loss, damage or expenses under this coverage is \$50,000.

(d) **Service Interruption**

- (i) The insurance provided under the Business Income Additional Coverage, the Extra Expense Additional Coverage and for (c) Perishable Goods in this Equipment Breakdown

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Additional Coverage is extended to apply to your loss, damage or expense caused by the interruption of utility services. The interruption must result from an "accident" to equipment, including overhead transmission lines, that is owned by a utility, landlord, a landlord's utility or other supplier who provides you with any of the following services: electrical power, waste disposal, air conditioning, refrigeration, heating, natural gas, compressed air, water or steam, internet access, telecommunications services, wide area networks or data transmission. The equipment must meet the definition of "covered equipment" except that it is not Covered Property.

- (ii) Service interruption coverage will not apply unless the failure or disruption of service exceeds 24 hours immediately following the "accident".
- (iii) The most we will pay for loss, damage or expense under this coverage is the limit that applies to Business Income, Extra Expense or Perishable Goods.

(e) Electronic Data Restoration

We will pay for your reasonable and necessary cost to research, replace and restore lost electronic data.

The most we will pay for loss or expense under this coverage, including actual loss of "business income" you sustain and necessary "extra expense" you incur, is \$50,000.

(f) Environmental, Safety and Efficiency Improvements

The following provision does not apply to property insured on an "actual cash value" basis.

If "covered equipment" requires replacement due to loss or damage caused by or resulting from an "accident", we will pay your additional cost to replace with equipment that is better for the

environment, more efficient or safer than the equipment being replaced.

HOWEVER, we will not pay more under this additional coverage than 125% of what the cost would have been to repair or replace with like kind and quality.

This provision does not increase any of the applicable limits.

(4) Additional Exclusions

- (a) We will not pay under this Equipment Breakdown Additional Coverage for loss, damage or expense caused by or resulting from:
 - (i) Any defect, programming error, programming limitation, "computer" virus, malicious code, loss of data, loss of access, loss of use, loss of functionality or other condition within "electronic data". But if an "accident" results, we will pay for the resulting loss, damage or expense; or
 - (ii) Any of the following tests:
 - i. A hydrostatic, pneumatic or gas pressure test of any boiler or pressure vessel; or
 - ii. An electrical insulation breakdown test of any type of electrical equipment.
- (b) With respect to (d) Service Interruption coverage, we will not pay for an "accident" caused by or resulting from: fire; lightning; windstorm or hail; explosion (except for steam or centrifugal explosion); smoke; aircraft or vehicles; riot or civil commotion; vandalism; sprinkler leakage; falling objects; weight of snow, ice or sleet; freezing; collapse; flood; or earth movement.
- (c) Exclusion B.1.h. Fungi, Wet Rot Or Dry Rot does not apply to spoilage of personal property that is "perishable goods," to the extent that spoilage is covered under (c) Perishable Goods coverage.
- (d) We will not pay under this Equipment Breakdown Additional Coverage for any loss or damage to animals.

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(5) Additional Conditions

(a) Suspension

Whenever "covered equipment" is found to be in, or exposed to a dangerous condition, any of our representatives may immediately suspend the insurance against loss from an "accident" to that "covered equipment". This can be done by mailing or delivering a written notice of suspension to: your address as shown in the Declarations, or at the address where the equipment is located. Once suspended in this way, your insurance can be reinstated only by written notice of reinstatement from us.

(b) Jurisdictional Inspections

If "covered equipment" under this Equipment Breakdown Additional Coverage requires inspection to comply with state or municipal boiler and pressure vessel regulations, we agree to perform such inspection on your behalf. We do not warrant that conditions are safe or healthful.

- (6) The most we will pay for loss, damage or expense under this Equipment Breakdown Additional Coverage arising from any one "accident" is the applicable Limit of Insurance shown in the Declarations. This Equipment Breakdown Additional Coverage will not increase the Limits of Insurance provided by this policy.

o. Arson Reward for Conviction

- (1) In the event that a covered fire loss was the result of an act of arson, we will pay a reward to anyone, other than paid investigators, who gives legal authorities information that leads to the conviction of anyone who committed such arson.
- (2) We will pay up to 10 percent of the amount of the insured fire loss or \$10,000, whichever is less. This payment is the most we will pay in any one occurrence, regardless of the number of persons providing information or convicted of arson.
- (3) The limit for this Arson Reward for Conviction Additional Coverage is in addition to the Limits of Insurance.
- (4) No deductible applies to this Arson Reward for Conviction Additional Coverage.

p. Money And Securities

- (1) We will pay for loss of "money" and "securities" used in your business while at a bank or savings institution, within your living quarters or the living quarters of your partners or any employee having use and custody of the property, at the described premises, or in transit by direct route between any of these places, resulting directly from:
 - (a) Theft, meaning any act of stealing;
 - (b) Disappearance; or
 - (c) Destruction.
- (2) In addition to the Limitations and Exclusions applicable to property coverage, we will not pay for loss:
 - (a) Resulting from accounting or arithmetical errors or omissions;
 - (b) Due to the giving or surrendering of property in any exchange or purchase;
 - (c) Of property contained in any "money"-operated device unless the amount of "money" deposited in it is recorded by a continuous recording instrument in the device; or
 - (d) From an unattended motor vehicle.
 - (e) That is covered under the Unauthorized Business Card Use or Computer Fraud And Funds Transfer Fraud Additional Coverages.
- (3) The most we will pay under this Money and Securities Additional Coverage for loss in any one occurrence is:
 - (a) Inside the Premises, \$10,000 for "money" and "securities" while:
 - (i) In or on the described premises; or
 - (ii) Within a bank or savings institution;
 unless a higher Limit of Insurance for "money" and "securities" inside the premises is shown in the Declarations; and
 - (b) Outside the Premises (Limited – loss from an unattended motor vehicle is excluded), \$10,000 for "money" and "securities" while anywhere else, unless a higher Limit of Insurance for "money" and "securities" outside the premises is shown in the Declarations.

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- (4) All loss:
- (a) Caused by one or more persons; or
 - (b) Involving a single act or series of related acts;
- is considered one occurrence.
- (5) You must keep records of all "money" and "securities" so we can verify the amount of any loss or damage.
- (6) The limit for this Money and Securities Additional Coverage is in addition to the Limits of Insurance.
- q. Appurtenant Structures
- (1) We will pay for direct physical loss of or damage to any separate garages, storage buildings, swimming pools, spas, fences, retaining walls and other appurtenant structures usual to your business at the described premises in the Declarations caused by or resulting from any Covered Cause of Loss.
 - (2) The most we will pay for loss or damage under this Appurtenant Structures Additional Coverage in any one occurrence is 10% of the Building Limit of Insurance shown in the Declarations for that described building.
- HOWEVER, if the value of any one garage, storage building, swimming pool, spa, fence, retaining wall or other appurtenant structure exceeds \$50,000, this Appurtenant Structures Additional Coverage does not apply to that structure.
- (3) The limit for this Appurtenant Structures Additional Coverage is in addition to the Limits of Insurance.
- r. Back Up Of Sewer Or Drain Water Damage
- (1) For the purpose of this Back Up Of Sewer Or Drain Water Damage Additional Coverage the following definition is added:
- "Flood" means a general and temporary condition of partial or complete inundation of normally dry land areas from:
- (a) The unusual and rapid accumulation or runoff of surface waters from any source;
 - (b) The overflow of inland or tidal waters; or
 - (c) Waves, tides or tidal waves.
- (2) We will pay for loss of or damage to Covered Property caused by water that backs up or overflows from a sewer or drain, sump pump well or similar device designed to prevent overflow, seepage or leakage of subsurface water.
- HOWEVER, we will not pay for loss or damage that results from sewer back-up or sump pump overflow that occurs during the period beginning 10 days before and ending 10 days after a "flood" on the described premises.
- (3) The most we will pay for loss or damage under this coverage is:
- (a) \$5,000 per building; or
 - (b) \$25,000 in any one policy period, regardless of the number of losses;
- unless a higher Limit of Insurance for Back Up Of Sewer Or Drain Water Damage is shown in the Declarations.
- (4) The limit of insurance that applies to coverage under this Back Up Of Sewer Or Drain Water Damage Additional Coverage includes any loss arising from debris removal expense, Business Income Additional Coverage and Extra Expense Additional Coverage.
- (5) The limit for this Back Up Of Sewer Or Drain Water Damage Additional Coverage is in addition to the Limits of Insurance.
- (6) The Debris Removal Additional Coverage does not apply to this Back Up Of Sewer Or Drain Water Damage Additional Coverage.
- s. Dependent Properties – Business Income
- (1) We will pay for the actual loss of "business income" you sustain due to the necessary and unavoidable suspension of your "operations" during the "period of restoration". The suspension must be caused by direct physical loss of or damage to "dependent property" caused by or resulting from any Covered Cause of Loss.
 - (2) We will only pay for loss of "business income" that occurs within 12 consecutive months after the date of direct physical loss or damage.
 - (3) This Dependent Properties – Business Income Additional Coverage is not subject to the Limits of Insurance.

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L Limited Coverage for Fungi, Wet Rot Or Dry Rot

- (1) The coverage described in paragraphs v.(2) and v.(6) only applies when the "fungi", wet rot or dry rot are the result of a "specified cause of loss" other than fire or lightning that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.
- (2) We will pay for loss or damage by "fungi", wet rot or dry rot. As used in this Limited Coverage, the term loss or damage means:
 - (a) Direct physical loss or damage to Covered Property caused by "fungi", wet rot or dry rot, including the cost of removal of the "fungi", wet rot or dry rot;
 - (b) The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungi", wet rot or dry rot; and
 - (c) The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungi", wet rot or dry rot are present.
- (3) The coverage described under this Limited Coverage is limited to \$15,000. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or damage arising out of all occurrences of "specified causes of loss" (other than fire or lightning) which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss which results in "fungi", wet rot or dry rot, we will not pay more than the total of \$15,000 even if the "fungi", wet rot or dry rot continues to be present or active, or recurs, in a later policy period.
- (4) The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage

by "fungi", wet rot or dry rot, and other loss or damage, we will not pay more, for the total of all loss or damage, than the applicable Limit of Insurance on the affected Covered Property.

If there is covered loss or damage to Covered Property, not caused by "fungi", wet rot or dry rot, loss payment will not be limited by the terms of this Limited Coverage, except to the extent that "fungi", wet rot or dry rot causes an increase in the loss. Any such increase in the loss will be subject to the terms of this limited coverage.

- (5) The terms of this Limited Coverage do not increase or reduce the coverage provided under the Water Damage, Other Liquids, Powder Or Molten Material Damage or Collapse Additional Coverages.
- (6) The following applies only if Business Income and/or Extra Expense Coverage applies to the described premises and only if the suspension of "operations" satisfies all the terms and conditions of the applicable Business Income and/or Extra Expense Additional Coverage.
 - (a) If the loss which resulted in "fungi", wet rot or dry rot does not in itself necessitate a suspension of "operations", but such suspension is necessary due to loss or damage to property caused by "fungi", wet rot or dry rot, then our payment under the Business Income and/or Extra Expense is limited to the amount of loss and/or expense sustained in a period of not more than 30 days. The days need not be consecutive.
 - (b) If a covered suspension of "operations" was caused by loss or damage other than "fungi", wet rot or dry rot, but remediation of "fungi", wet rot or dry rot prolongs the "period of restoration", we will pay for loss and/or expense sustained during the delay (regardless of when such a delay occurs during the "period of restoration"), but such coverage is limited to 30 days. The days need not be consecutive.

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u. Building Property of Others

- (1) If you occupy a described premises as a tenant, and a written lease or rental agreement for that premises requires you to pay for loss of or damage to a part of building property you do not own, we will pay for direct physical loss of or damage to that part of building property, other than exterior glass, caused by a Covered Cause of Loss.
- (2) The most we will pay for any loss or damage under this Building Property of Others Additional Coverage is \$10,000, unless a higher limit is shown in the Declarations.
- (3) The limit for this Building Property of Others Additional Coverage is in addition to the Limits of Insurance.

v. Unauthorized Business Card Use

- (1) We will pay for the legal obligation you have because of the theft or unauthorized use of your business credit, debit or charge cards issued to you or registered in your name or the name of your business.
- (2) The most we will pay under this Unauthorized Business Card Use Additional Coverage for loss in any one occurrence is \$10,000.
- (3) All loss:
 - (a) Caused by one or more persons; or
 - (b) Involving a single act or series of related acts;
 is considered one occurrence.
- (4) The limit for this Unauthorized Business Card Use Additional Coverage is in addition to the Limits of Insurance.

w. Computer Fraud And Funds Transfer Fraud

- (1) We will pay for:
 - (a) Loss resulting from "fraudulent instruction" directing a financial institution to transfer, pay or deliver "money" or "securities" from your "transfer account"; or
 - (b) Loss directly related to the use of any computer to fraudulently cause a transfer of covered property from inside the described premises to a person (other than a messenger) or place outside those premises.

(2) The most we will pay under this Computer Fraud And Funds Transfer Fraud Additional Coverage for loss in any one occurrence is \$10,000.

(3) All loss:

- (a) Caused by one or more persons; or
- (b) Involving a single act or series of related acts;

 is considered one occurrence.

(4) The limit for this Unauthorized Business Card Use Additional Coverage is in addition to the Limits of Insurance.

6. COVERAGE EXTENSIONS

Except as otherwise provided, the following Extensions apply to property located in or on the described building in the Declarations or in the open (or in a vehicle) within 1,000 feet of the described premises.

In addition to the Limits of Insurance, you may extend the insurance provided by this policy as follows.

a. Newly Acquired or Constructed Property**(1) Buildings**

If this policy covers Buildings, you may extend that insurance to apply to:

- (a) Your new buildings while being built on the described premises; and
- (b) Buildings you acquire at premises other than the one described, intended for:
 - (i) Similar use as the described building in the Declarations; or
 - (ii) Use as a warehouse.

The most we will pay for loss or damage under this Buildings Coverage Extension is \$1,000,000 at each building.

(2) Business Personal Property

If this policy covers Business Personal Property, you may extend that insurance to apply to:

- (a) Business Personal Property, including such property that you newly acquire, other than at fairs or exhibitions, at any premises you acquire;

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- (b) Business Personal Property, including such property that you newly acquire, located at your newly constructed or acquired buildings at the described premises; or
 - (c) Business Personal Property that you newly acquire, located at the described premises.
- This Extension does not apply to personal property that you temporarily acquire in the course of installing or performing work on such property or your wholesale activities.
- The most we will pay for loss or damage under this Business Personal Property Coverage Extension is \$500,000 at each building.
- (3) Period Of Coverage**
- With respect to insurance on or at each newly acquired or constructed property, coverage will end when any of the following first occurs:
- (a) This policy expires;
 - (b) 180 days after you acquire the property or begin construction of that part of the building that would qualify as covered property; or
 - (c) You report values to us.
- We will charge you additional premium for values reported from the date you acquire the property or begin construction of that part of the building that would qualify as covered property.
- b. Newly Acquired Property - Business Income**
- (1) You may extend the insurance that applies to Business Income Additional Coverages to apply to property at any premises you newly acquire, other than temporary premises such as fairs or exhibitions, whether attended regularly or not.
 - (2) The most we will pay for loss under this Newly Acquired Property - Business Income Coverage Extension is the lesser of:
 - (a) The actual loss of "business income" you sustain, as provided for and described under the Business Income Additional Coverage; or
 - (b) \$100,000.
 - (3) This insurance will end the earlier of:
 - (a) This policy expires;
 - (b) 180 days after you acquire the property; or
 - (c) You report values to us.
- We will charge you any additional premium from the date you acquire the property.
- c. Personal Property Off-premises**
- You may extend the insurance provided by this policy to apply to your Covered Property, other than "money" and "securities", "valuable papers and records" or accounts receivable, while it is in the course of transit or at a premises you do not own, lease or operate.
- The most we will pay for loss or damage under this Personal Property Off-premises Coverage Extension is \$15,000.
- d. Outdoor Trees, Shrubs, Plants, and Lawns**
- (1) You may extend the insurance provided by this policy to apply to your outdoor trees, shrubs, plants and lawns (other than "stock"), including debris removal expense, caused by or resulting from any of the following Causes of Loss:
 - Fire; Lightning; Explosion; Aircraft or vehicles; Riot or civil commotion; Vandalism; or Theft.
 - (2) The most we will pay for loss or damage under this Outdoor Trees, Shrubs, Plants, and Lawns Coverage Extension is \$10,000 in any one occurrence, unless a higher limit for outdoor trees, shrubs, plants, and lawns is shown in the Declarations, but not more than \$2,500 for any one tree, shrub or plant.
 - (3) The Debris Removal Additional Coverage does not apply to this Outdoor Trees, Shrubs, Plants, and Lawns Coverage Extension.
- e. Outdoor Signs**
- (1) You may extend the insurance provided by this policy to apply to your outdoor signs, including debris removal expense.
 - (2) The most we will pay for loss or damage under this Outdoor Signs Coverage Extension is \$2,500 in any one occurrence, unless a higher limit for outdoor signs is shown in the Declarations.

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- (3) The Debris Removal Additional Coverage does not apply to this Outdoor Signs Coverage Extension.

f. Personal Effects

You may extend the insurance that applies to Business Personal Property to apply to personal effects owned by you, your officers, your partners or "members", your "managers" or your employees.

HOWEVER, personal effects does not include:

- (1) Tools or equipment used in your business; or
- (2) "Money", "securities" or jewelry.

The most we will pay for loss or damage under this Personal Effects Coverage Extension is \$10,000 in any one occurrence, but not more than \$2,500 for the personal effects of any one individual.

g. Valuable Papers And Records

- (1) You may extend the insurance provided by this policy to apply to direct physical loss or damage to "valuable papers and records" that you own, or that are in your care, custody or control, caused by or resulting from a Covered Cause of Loss. This Valuable Papers And Records Coverage Extension includes the cost to research, replace or restore the lost information on "valuable papers and records" for which duplicates do not exist.
- (2) This Valuable Papers And Records Coverage Extension does not apply to:
 - (a) Property held as samples or for delivery after sale;
 - (b) Property in storage away from the described premises.
- (3) The most we will pay under this Valuable Papers And Records Coverage Extension for loss of or damage to "valuable papers and records", in any one occurrence at the described building is \$25,000, unless a higher Limit of Insurance for "valuable papers and records" is shown in the Declarations. For "valuable papers and records" not at the described premises, the most we will pay is \$25,000.
- (4) Loss or damage to "valuable papers and records" will be valued at the cost of restoration or replacement of the lost or damaged information. To

the extent that the contents of the "valuable papers and records" are not restored, the "valuable papers and records" will be valued at the cost of replacement with blank materials of substantially identical type.

- (5) Section B. EXCLUSIONS of this Coverage Form does not apply to this Valuable Papers And Records Coverage Extension except for:

- (a) Paragraph B.1.c., Governmental Action;
- (b) Paragraph B.1.d., Nuclear Hazard;
- (c) Paragraph B.1.f., War And Military Action;
- (d) Paragraph B.2.f., Dishonesty;
- (e) Paragraph B.2.g., False Pretense;
- (f) Paragraph B.2.m.(2), Errors Or Omissions; and
- (g) Paragraph B.3.

h. Accounts Receivable

- (1) You may extend the insurance provided by this policy to apply to your records of accounts receivable. We will pay:

- (a) All amounts due from your customers that you are unable to collect;
- (b) Interest charges on any loan required to offset amounts you are unable to collect pending our payment of these amounts;
- (c) Collection expenses in excess of your normal collection expenses that are made necessary by loss or damage; and
- (d) Other reasonable expenses that you incur to re-establish your records of accounts receivable;

that result from direct physical loss or damage by any Covered Cause of Loss to your records of accounts receivable.

- (2) The most we will pay under this Accounts Receivable Coverage Extension for loss or damage in any one occurrence at the described building is \$25,000, unless a higher Limit of Insurance for accounts receivable is shown in the Declarations.

For records of accounts receivable not at the described premises, the most we will pay is \$25,000.

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- (3) Section B. EXCLUSIONS of this Coverage Form does not apply to this Accounts Receivable Coverage Extension except for:
 - (a) Paragraph B.1.c., Governmental Action;
 - (b) Paragraph B.1.d., Nuclear Hazard;
 - (c) Paragraph B.1.f., War And Military Action;
 - (d) Paragraph B.2.f., Dishonesty;
 - (e) Paragraph B.2.g., False Pretense;
 - (f) Paragraph B.3.; and
 - (g) Paragraph B.6., Accounts Receivable Exclusion.
- i. **Salespersons Samples**
 - (1) You may extend the insurance that applies to Business Personal Property to apply to salespersons samples while away from the described premises.
 - (2) The most we will pay under this Salespersons Samples Coverage Extension for loss or damage in any one occurrence is \$10,000.
- j. **Business Income and Extra Expense – Increased Period of Restoration Due to Ordinance or Law**

If a Covered Cause of Loss occurs to property at the described premises, coverage is extended to include the amount of actual and necessary loss you sustain during the "period of restoration" of "operations" caused by or resulting from the enforcement of any ordinance or law that:

 - (1) Regulates the construction or repair of any property;
 - (2) Requires the tearing down of parts of any property not damaged by a Covered Cause of Loss; and
 - (3) Is in force at the time of loss.

HOWEVER, coverage is not extended under this Business Income and Extra Expense – Increased Period of Restoration Due to Ordinance or Law Extension to include loss caused by or resulting from the enforcement of any ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".
- k. **Removal Permit**

If Covered Personal Property is removed to a new premise that is described in the Declarations, you may extend this insurance to include that Covered Personal Property at each premise during the removal. Coverage at each premises will apply in the proportion that the value at each premises bears to the value of all Covered Personal Property being removed. This permit applies up to 30 days after the date Covered Personal Property is first removed at the previous premises; after that, this Removal Permit Coverage Extension does not apply at the previous premises.
- l. **Electronic Data**
 - (1) You may extend the insurance provided by this policy to apply to the cost to replace or restore "electronic data" which has been destroyed or corrupted by a Covered Cause of Loss, a "computer" virus, harmful code or similar instruction introduced into or enacted on a "computer" system (including "electronic data") or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for loss or damage caused by or resulting from manipulation of a "computer" system (including "electronic data") by any employee, including a temporary or leased employee, or by an entity retained by you, or for you, to inspect, design, install, modify, maintain, repair or replace that system.
 - (2) To the extent that "electronic data" is not replaced or restored, the loss will be valued at the cost of replacement of the media on which the "electronic data" was stored, with blank media of substantially identical type.
 - (3) The most we will pay under this Electronic Data Coverage Extension for all loss or damage sustained in any one policy year, regardless of the number of occurrences of loss or damage or the number of buildings, locations or "computer" systems involved, is \$10,000, unless a higher Limit of Insurance is shown in the Declarations. If loss payment on the first occurrence does not exhaust this

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amount, then the balance is available for subsequent loss or damage sustained in, but not after, that policy year. With respect to an occurrence which begins in one policy year and continues or results in additional loss or damage in a subsequent policy year(s), all loss or damage is deemed to be sustained in the policy year in which the occurrence began.

- (4) This Electronic Data Coverage Extension does not apply to losses covered under the Equipment Breakdown Additional Coverage.

m. Interruption of Computer Operations

- (1) You may extend the insurance that applies to Business Income and Extra Expense Additional Coverages to apply to a suspension of "operations" caused by an interruption in "computer" operations due to destruction or corruption of "electronic data" due to "specified causes of loss", Collapse or a "computer" virus, harmful code or similar instruction introduced into or enacted on a "computer" system (including "electronic data") or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for an interruption related to manipulation of a "computer" system (including "electronic data") by any employee, including a temporary or leased employee, or by an entity retained by you, or for you, to inspect, design, install, modify, maintain, repair or replace that system.
- (2) The most we will pay under this Interruption of Computer Operations Coverage Extension for all loss sustained and expense incurred in any one policy year, regardless of the number of interruptions or the number of buildings, locations or "computer" systems involved, is \$10,000 unless a higher Limit of Insurance is shown in the Declarations. If loss payment relating to the first interruption does not exhaust this amount, then the balance is available for loss or expense sustained or incurred as a result of subsequent interruptions in that policy year. A balance remaining at the end of a policy year does not increase the amount of insurance in the next policy year. With respect to any interruption which begins

in one policy year and continues or results in additional loss or expense in a subsequent policy year(s), all loss and expense is deemed to be sustained or incurred in the policy year in which the interruption began.

- (3) This Interruption of Computer Operations Coverage Extension does not apply to loss sustained or expense incurred after the end of the "period of restoration", even if the amount of insurance stated in (3) above has not been exhausted.
- (4) Coverage for Business Income does not apply when a suspension of "operations" is caused by destruction or corruption of "electronic data", or any loss or damage to "electronic data", except as provided under paragraphs (1) through (3) of this Interruption of Computer Operations Coverage Extension.
- (5) Coverage for Extra Expense does not apply when action is taken to avoid or minimize a suspension of "operations" caused by destruction or corruption of "electronic data", or any loss or damage to "electronic data", except as provided under paragraphs (1) through (3) of this Interruption of Computer Operations Coverage Extension.
- (6) This Interruption of Computer Operations Coverage Extension does not apply to losses covered under the Equipment Breakdown Additional Coverage.

B. EXCLUSIONS

- 1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. These exclusions apply whether or not the loss event results in widespread damage or affects a substantial area.

a. Ordinance Or Law

The enforcement of any ordinance or law:

- (1) Regulating the construction, use or repair of any property; or
- (2) Requiring the tearing down of any property, including the cost of removing its debris; or
- (3) Requiring the removal or disposal of "pollutants".

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This Ordinance Or Law Exclusion applies whether the loss results from:

- (1) An ordinance or law that is enforced even if the property has not been damaged; or
 - (2) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property or removal of its debris, following a physical loss to that property.
- b. **Earth Movement**
- (1) Earthquake, including any earth sinking, rising or shifting related to such event;
 - (2) Landslide, including any earth sinking, rising or shifting related to such event;
 - (3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;
 - (4) Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

But if Earth Movement, as described in (1) through (4) above, results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion.

- (5) Volcanic eruption, explosion or effusion. But if volcanic eruption, explosion or effusion results in fire, building glass breakage or volcanic action, we will pay for the loss or damage caused by that fire, building glass breakage or volcanic action.

Volcanic action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

- (a) Airborne volcanic blast or airborne shock waves;
- (b) Ash, dust, or particulate matter; or
- (c) Lava flow.

All volcanic eruptions that occur within any 168-hour period will constitute a single occurrence.

Volcanic action does not include the cost to remove ash, dust or particulate matter that does not cause

direct physical loss of or damage to Covered Property.

c. **Governmental Action**

Seizure or destruction of property by order of governmental authority.

But we will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this policy.

d. **Nuclear Hazard**

Nuclear reaction or radiation, or radioactive contamination, including but not limited to radon gas, however caused.

But if nuclear reaction or radiation, or radioactive contamination, results in fire, we will pay for the loss or damage caused by that fire.

e. **Utility Services**

The failure of power, communication, water or other utility service supplied to the described premises, however caused, if the failure occurs away from the described premises.

Failure of any utility service includes lack of sufficient capacity and reduction in supply.

Loss or damage caused by a surge of power is also excluded, if the surge would not have occurred but for an event causing a failure of power.

But if the failure or surge of power, or the failure of communication, water or other utility service results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

Communication services include but are not limited to service relating to internet access or access to any electronic, cellular or satellite network.

This exclusion does not apply to loss or damage provided under the Equipment Breakdown Additional Coverage.

f. **War And Military Action**

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

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- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.
- g. Water**
 - (1) Flood, surface water, waves (including tidal wave and tsunami), tides, tidal water, overflow of any body of water, or spray from any of these, all whether or not driven by wind (including storm surge);
 - (2) Mudslide or mudflow;
 - (3) Water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment, except as provided under the Back Up Of Sewer Or Drain Water Damage Additional Coverage;
 - (4) Water under the ground surface pressing on, or flowing or seeping through:
 - (a) Foundations, walls, floors or paved surfaces;
 - (b) Basements, whether paved or not; or
 - (c) Doors, windows or other openings; or
 - (5) Waterborne material carried or otherwise moved by any of the water referred to in paragraph (1), (3) or (4), or material carried or otherwise moved by mudslide or mudflow.

This exclusion applies regardless of whether any of the above, in paragraphs (1) through (5), is caused by an act of nature or is otherwise caused. An example of a situation to which this exclusion applies is the situation where a dam, levee, seawall or other boundary or containment system fails in whole or in part, for any reason, to contain the water. **HOWEVER**, if electrical "covered equipment" requires drying out because of the above, we will pay for the direct expenses of such drying out subject to the applicable Limit of Insurance and deductible for Building or Business Personal Property, whichever applies. But if any of the above paragraphs (1) through (5), results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage.

h. Fungi, Wet Rot Or Dry Rot

Presence, growth, proliferation, spread or any activity of "fungi", wet rot or dry rot. But if "fungi", wet rot or dry rot result in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion does not apply:

- (1) When "fungi", wet rot or dry rot result from fire or lightning; or
- (2) To the extent that coverage is provided in the Limited Coverage For Fungi, Wet Rot Or Dry Rot Additional Coverage, with respect to loss or damage by a cause of loss other than fire or lightning.

i. Virus Or Bacteria

- (1) Any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.
- (2) However, the exclusion in paragraph (1) does not apply to loss or damage caused by or resulting from "fungi", wet rot or dry rot. Such loss or damage is addressed in Exclusion h.;
- (3) With respect to any loss or damage subject to the exclusion in paragraph (1), such exclusion supersedes any exclusion relating to "pollutants".

2. We will not pay for loss or damage caused by or resulting from any of the following:

a. Electrical Apparatus

Artificially generated electrical, magnetic or electromagnetic energy that damages, disturbs, disrupts or otherwise interferes with any:

- (1) Electrical or electronic wire, device, appliance, system or network; or
- (2) Device, appliance, system or network utilizing cellular or satellite technology.

For the purpose of this exclusion, electrical, magnetic or electromagnetic energy includes but is not limited to:

- (1) Electrical current, including arcing;
- (2) Electrical charge produced or conducted by a magnetic or electromagnetic field;
- (3) Pulse of electromagnetic energy; or
- (4) Electromagnetic waves or microwaves.

But if fire results, we will pay for the loss or damage caused by fire.

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This Electrical Apparatus exclusion does not apply to the coverage provided under the Equipment Breakdown Additional Coverage.

b. Consequential Losses

Delay, loss of use or loss of market.

c. Smoke, Vapor, Gas

Smoke, vapor or gas from agricultural smudging or industrial operations.

d. Steam Apparatus

Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.

This Steam Apparatus exclusion does not apply to the coverage provided under the Equipment Breakdown Additional Coverage.

e. Frozen Plumbing

Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:

- (1) You do your best to maintain heat in the building or structure; or
- (2) You drain the equipment and shut off the supply if the heat is not maintained.

f. Dishonesty

Dishonest or criminal acts by you, anyone else with an interest in the property, or any of your or their partners, "members", officers, "managers", employees (including leased employees), directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose:

- (1) Acting alone or in collusion with others; or
- (2) Whether or not occurring during the hours of employment.

This exclusion does not apply to acts of destruction by your employees (including leased employees); but theft by employees is not covered.

With respect to Covered Property, including accounts receivable and "valuable papers and records", this exclusion does not apply to carriers for hire.

This exclusion does not apply to coverage that is provided under the Employee Dishonesty Optional Coverage.

g. False Pretense

Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.

h. Exposed Property

Rain, snow, ice or sleet to personal property in the open.

i. Collapse

- (1) Collapse, including any of the following conditions of property or any part of the property:
 - (a) An abrupt falling down or caving in;
 - (b) Loss of structural integrity, including separation of parts of the property or property in danger of falling down or caving in; or
 - (c) Any cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion as such condition relates to paragraph i.(1)(a) or i.(1)(b).

But if collapse results in a Covered Cause of Loss at the described premises, we will pay for the loss or damage caused by that Covered Cause of Loss.

(2) This Exclusion i., does not apply:

- (a) To the extent that coverage is provided under the Collapse Additional Coverage; or
- (b) To collapse caused by one or more of the following:
 - (i) The "specified causes of loss";
 - (ii) Breakage of building glass;
 - (iii) Weight of rain that collects on a roof; or
 - (iv) Weight of people or personal property.

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j. Pollutants

We will not pay for loss or damage caused by or resulting from the discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release or escape of "pollutants" results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

k. Neglect

Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.

l. Other Types Of Loss

- (1) Wear and tear;
- (2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
- (3) Smog;
- (4) Settling, cracking, shrinking or expansion;
- (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals;
- (6) Mechanical breakdown, including rupture or bursting caused by centrifugal force, except as provided under the Equipment Breakdown Additional Coverages.
- (7) The following causes of loss to personal property:
 - (a) Dampness or dryness of atmosphere;
 - (b) Changes in or extremes of temperature; or
 - (c) Marring or scratching.

But if an excluded cause of loss that is listed in paragraphs (1) through (7) above results in a "specified cause of loss", "accident" or building glass breakage, we will pay for the loss or damage caused by that "specified cause of loss" or building glass breakage.

m. Errors Or Omissions

Errors or omissions in:

- (1) Programming, processing or storing data, as described under "electronic data" or in any "computer" operations; or
- (2) Processing or copying "valuable papers and records".

However, we will pay for direct physical loss or damage caused by resulting fire or explosion if these causes of loss would be covered by this coverage form.

This exclusion does not apply to coverage that is provided under the Employee Dishonesty Optional Coverage.

n. Installation, Testing, Repair

Errors or deficiency in design, installation, testing, maintenance, modification or repair of your "computer" system including "electronic data".

However, we will pay for direct physical loss or damage caused by resulting fire or explosion if these causes of loss would be covered by this coverage form.

This exclusion does not apply to coverage that is provided under the Employee Dishonesty Optional Coverage.

o. Electrical Disturbance

Electrical or magnetic injury, disturbance or erasure of "electronic data", except as provided under the Equipment Breakdown or Electronic Data Additional Coverages.

However, we will pay for direct loss or damage caused by lightning.

p. Leakage or Seepage

Constant or repeated seepage or leakage of water or steam, or the presence or condensation of humidity, moisture or vapor, whether continuous or intermittent from any:

- (1) Heating, air conditioning or refrigerating system;
- (2) Domestic appliance; or
- (3) Plumbing system, including from or around any shower stall or other shower bath installation, bathtub or other plumbing fixture.

3. We will not pay for loss or damage caused by or resulting from any of the following B.3.a. through B.3.c. But if an excluded cause of loss that is listed in B.3.a. through B.3.c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

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a. Weather Conditions

Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in paragraph B.1. above to produce the loss or damage.

b. Acts Or Decisions

Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

c. Negligent Work

Faulty, inadequate or defective:

- (1) Planning, zoning, development, surveying, siting;
 - (2) Design, specifications, workmanship, work methods, repair, construction, renovation, remodeling, grading, compaction, failure to protect the property;
 - (3) Materials used in repair, construction, renovation or remodeling; or
 - (4) Maintenance;
- of part or all of any property on or off the described premises.

4. Additional Exclusion

The following applies only to the property specified in this Additional Exclusion.

Loss Or Damage To Products

We will not pay for loss or damage to any merchandise, goods or other product caused by or resulting from error or omission by any person or entity (including those having possession under an arrangement where work or a portion of the work is outsourced) in any stage of the development, production or use of the product, including planning, testing, processing, packaging, installation, maintenance or repair. This exclusion applies to any effect that compromises the form, substance or quality of the product. But if such error or omission results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

5. Business Income And Extra Expense Exclusions**a. We will not pay for:**

- (1) Any "extra expense", or increase of "business income" loss, caused by or resulting from:
 - (a) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the

rebuilding, repair or replacement by strikers or other persons; or

- (b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the suspension of "operations", we will cover such loss that affects your Business Income during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of the Extended Business Income Additional Coverage.

- (2) Any other consequential loss.

b. With respect to this exclusion, suspension means:

- (1) The partial slowdown or complete cessation of your business activities; and
- (2) That a part or all of the described premises is rendered untenantable, if coverage for Business Income applies.

6. Accounts Receivable Exclusion

The following additional exclusion applies to the Accounts Receivable Coverage Extension:

We will not pay for:

- a. Loss or damage caused by or resulting from alteration, falsification, concealment or destruction of records of accounts receivable done to conceal the wrongful giving, taking or withholding of "money", "securities" or other property.

This exclusion applies only to the extent of the wrongful giving, taking or withholding.

- b. Loss or damage caused by or resulting from bookkeeping, accounting or billing errors or omissions.
- c. Any loss or damage that requires any audit of records or any inventory computation to prove its factual existence.

C. LIMITS OF INSURANCE

1. The most we will pay for loss or damage in any one occurrence is the applicable Limits of Insurance shown in the Declarations, except as otherwise provided in this Section.
2. The limits applicable to Additional Coverages are in addition to the Limits of Insurance only if so indicated in that Section of this Coverage Form.
3. The limits applicable to the Coverage Extensions are in addition to the Limits of Insurance.

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4. Building Limit – Automatic Increase

- a. The Limit of Insurance for Buildings will automatically increase by the annual percentage shown in the Declarations.
- b. The amount of increase is calculated as follows:
 - (1) Multiply the Building limit that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Building limit, times
 - (2) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 8% is .08), times
 - (3) The number of days since the beginning of the current policy year, or the effective date of the most recent policy change amending the Building limit, divided by 365.

Example:

- If: The applicable Building limit is \$100,000. The annual percentage increase is 8%. The number of days since the beginning of the policy year (or last policy change) is 146.

The amount of increase is

$$\$100,000 \times .08 \times (146 / 365) = \$3,200.$$

- c. The Automatic Increase percentage for Buildings will be the percentage shown in the Declarations. This percentage may change at each renewal date, unless a different percentage is selected by you.

5. Business Personal Property Limit – Automatic Increase

- a. The Limit of Insurance for Business Personal Property will automatically increase by the annual percentage shown in the Declarations.
- b. The amount of increase is calculated as follows:
 - (1) Multiply the Limit of Insurance that applied on the most recent of the policy inception date, the policy renewal date, or any other policy change amending the Limit of Insurance, times
 - (2) The percentage of increase shown in the Declarations, expressed as a decimal (example: 2% is .02), times
 - (3) The number of days since the beginning of the current policy year, or since the effective date of the most recent policy change amending the

**Business Personal Property limit,
divided by 365.**

Example:

- If: The applicable limit is \$150,000; and The annual percentage increase is 3%; and

The number of days since the beginning of the policy year (or last policy change) is 146;

Then the amount of increase is $\$150,000 \times .03 \times (146 / 365) = \$1,800.$

- c. The Automatic Increase percentage for Business Personal Property will be the average annual index shown in the Declarations. This percentage may change at each renewal date.

In no event will the Limit of Insurance be reduced unless you specifically request us to do so.

6. Business Personal Property Limit – Seasonal Increase

- a. Subject to paragraph 6.b., the Limit of Insurance for Business Personal Property is automatically increased by 25% to provide for seasonal variations.
- b. The increase described in paragraph 6.a will apply only if the Limit of Insurance shown for Business Personal Property in the Declarations is at least 100% of your average monthly values during the lesser of:
 - (1) The 12 months immediately preceding the date the loss or damage occurs; or
 - (2) The period of time you have been in business as of the date the loss or damage occurs.

D. DEDUCTIBLES

- 1. We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds the Deductible shown in the Declarations. We will then pay the amount of loss or damage in excess of the Deductible up to the applicable Limit of Insurance.
 - 2. Regardless of the amount of the Deductible, the most we will deduct from any loss or damage to exterior building glass in any one occurrence is \$250.
- But this \$250 Deductible will not increase the Deductible shown in the Declarations. This \$250 Deductible will be used to satisfy the requirements of the Deductible in the Declarations.

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3. No deductible applies to the following Additional Coverages:
- Fire Department Service Charge;
 - Fire Extinguisher Recharge;
 - Business Income;
 - Extra Expense;
 - Civil Authority; and
 - Arson Reward for Conviction.

E. PROPERTY LOSS CONDITIONS

1. Abandonment

There can be no abandonment of any property to us.

2. Appraisal

If we and you disagree on the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser after receiving a written request from the other, and will advise the other party of the name of such appraiser within 20 days. The two appraisers will select an umpire. If appraisers cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of property and the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- Pay its chosen appraiser; and
- Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

3. Duties In The Event Of Loss Or Damage

- You must see that the following are done in the event of loss or damage to Covered Property:
 - Notify the police if a law may have been broken.
 - Give us prompt notice of the loss or damage. Include a description of the property involved.
 - As soon as possible, give us a description of how, when and where the loss or damage occurred.
 - Take all reasonable steps to protect the Covered Property from further damage. If feasible, set the damaged property aside and in the best possible order for examination. Also keep a record of your expenses necessary to protect the Covered Property, for consideration in

the settlement of the claim. This will not increase the Limit of Insurance.

HOWEVER, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss.

- At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values, amount of loss claimed and a detailed description of each item.
- As often as may be reasonably required, permit us to inspect the damaged property and examine your books and records, including financial records and tax returns.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

- Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
- Cooperate with us in the investigation or settlement of the claim.
- Resume all or part of your "operations" as quickly as possible.

- We may examine any insured or their employee under oath, while not in the presence of any other insured or employee, at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. At our option and expense, any examination under oath may be video or audio taped as well as being recorded by stenographic record. If a written transcript is prepared of the testimony, then at our request your answers under oath must be signed under penalty of perjury.

4. Legal Action Against Us

No one may bring a legal action against us under this insurance unless:

- There has been full compliance with all of the terms of this insurance; and
- The action is brought within 1 year after the date on which the direct physical loss or damage occurred.

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5. Loss Payment

In the event of loss or damage covered by this policy:

- a. At our option, we will either:
 - (1) Pay the value of lost or damaged property as described in e. below;
 - (2) Pay the cost of repairing or replacing the lost or damaged property;
 - (3) Take all or any part of the property at an agreed or appraised value; or
 - (4) Repair, rebuild or replace the property with other property of like kind and quality, subject to b. below.
- b. The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.
- c. We will give notice of our intentions within 30 days after we receive the sworn proof of loss, provided you have complied with all of the conditions set forth in paragraph 3. above.
- d. We will not pay you more than your financial interest in the Covered Property.
- e. Except as provided in (2) through (9) below, we will determine the value of Covered Property as follows:
 - (1) At replacement cost without deduction for depreciation, subject to the following:
 - (a) We will pay the cost to repair or replace, after application of the deductible and without deduction for depreciation, but not more than the least of the following amounts, subject to E.5.b. above:
 - (i) The Limit of Insurance under this policy that applies to the lost or damaged property;
 - (ii) The cost to replace, on the same premises, the lost or damaged property with other property:
 - i. Of comparable material and quality; and
 - ii. Used for the same purpose; or
 - (iii) The amount that you actually spend that is necessary to repair or replace the lost or damaged property.
 - If a building is rebuilt at a new premises, the cost is limited to the cost which would have been

incurred had the building been built at the original premises.

- (b) You may make a claim for loss or damage covered by this insurance on an "actual cash value" basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an "actual cash value" basis, you may still make a claim on a replacement cost basis if you notify us of your intent to do so within 180 days after the loss or damage.
- (c) We will not pay on a replacement cost basis for any loss or damage:
 - (i) Until the lost or damaged property is actually repaired or replaced; and
 - (ii) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.
- (2) If the "Actual Cash Value - Buildings" option applies, as shown in the Declarations, paragraph (1) above does not apply to Buildings. Instead, we will determine the value of Buildings at "actual cash value".
- (3) The following property at "actual cash value":
 - (a) Used or second-hand merchandise held in storage or for sale;
 - (b) Property of others, other than leased personal property you have a contractual responsibility to insure, but this property is not covered for more than the amount for which you are liable, plus the cost of labor, materials or services furnished or arranged by you on personal property of others;
 - (c) Household contents, except personal property in apartments or rooms furnished by you as landlord;
 - (d) Manuscripts; and
 - (e) Works of art, antiques or rare articles, including but not limited to etchings, pictures, statuary, marble, bronzes, porcelain and bric-a-brac.
- (4) Glass at the cost of replacement with safety glazing material if required by law.

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- (5) Tenants' Improvements and Betterments at:
- (a) Replacement cost if you make repairs promptly.
 - (b) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:
 - (i) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
 - (ii) Divide the amount determined in (i) above by the number of days from the installation of improvements to the expiration of the lease.
- If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.
- (c) Nothing if others pay for repairs or replacement.
- (6) Applicable only to Money and Securities Additional Coverage:
- (a) "Money" at its face value; and
 - (b) "Securities" at their value at the close of business on the day the loss is discovered.
- (7) Applicable only to Accounts Receivable:
- (a) If you cannot accurately establish the amount of accounts receivable outstanding as of the time of loss or damage, the following method will be used:
 - (i) Determine the total of the average monthly amounts of accounts receivable for the 12 months immediately preceding the month in which the loss or damage occurs; and
 - (ii) Adjust that total for any normal fluctuations in the amount of accounts receivable for the month in which the loss or damage occurred or for any demonstrated variance from the average for that month.
 - (b) The following will be deducted from the total amount of accounts receivable, however that amount is established:
 - (i) The amount of the accounts for which there is no loss or damage;
 - (ii) The amount of the accounts that you are able to reestablish or collect;
 - (iii) An amount to allow for probable bad debts that you are normally unable to collect; and
 - (iv) All unearned interest and service charges.
- (8) "Stock" you have sold but not delivered at the selling price less expenses you otherwise would have had.
- (9) Business Income and Extra Expense:
- (a) We will determine the amount of a "business income" loss based on:
 - (i) the net income of your business before the direct physical loss or damage occurred;
 - (ii) the likely net income of your business if no physical loss or damage occurred, but not including any likely increase in net income attributable to an increase in the volume of business as a result of favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses;
 - (iii) the operating expenses, including payroll expenses, necessary to resume "operations" with the same quality of service that existed just before the direct physical loss or damage; and
 - (iv) other relevant sources of information, including:
 - i. financial records and accounting procedures;
 - ii. bills, invoices and other vouchers; and
 - iii. deeds, liens and contracts.
 - (b) We will determine the amount of "extra expense" based on:
 - (i) all expenses that exceed the normal operating expenses that would have been incurred by "operations" during the

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- "period of restoration" if no direct physical loss or damage occurred. The following will be deducted from the total of such expenses:
- i. the remaining salvage value of any property bought for temporary use during the "period of restoration", once "operations" are resumed; and
 - ii. any "extra expense" that is paid for by other insurance.
- (ii) all necessary expenses that reduce the "business income" loss that otherwise would have been incurred.
- f. Our payment for loss of or damage to property of others will only be for the account of the owners of the property. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
- g. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
- h. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, provided you have complied with all of the terms of this policy; and
- (1) We have reached agreement with you on the amount of loss; or
 - (2) An appraisal award has been made.
- i. A party wall is a wall that separates and is common to adjoining buildings that are owned by different parties. In settling covered losses involving a party wall, we will pay a proportion of the loss to the party wall based on your interest in the wall in proportion to the interest of the owner of the adjoining building. However, if you elect to repair or replace your building and the owner of the adjoining building elects not to repair or replace that building, we will pay you the full value of the loss to the party wall, subject to all applicable policy provisions including Limits of Insurance and all other provisions of this Loss Payment Condition. Our payment under the provisions of this paragraph does not alter any right of subrogation we may have

against any entity, including the owner or insurer of the adjoining building, and does not alter the terms of the Transfer Of Rights Of Recovery Against Others To Us Condition in this policy.

6. Recovered Property

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, you may retain the property. But then you must return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

HOWEVER if, at the time of loss, the amount of loss or damage to your property exceeded our Limit of Insurance and your property in excess of the Limit of Insurance was turned over to us, you retain your rights to recovery on such uninsured property. We will return to you a portion of any recovery on that property based upon the proportion of the loss in excess of our Limit of Insurance bears to the total loss.

7. Resumption Of Operations

We will reduce the amount of your:

- a. Loss payable under Business Income Additional Coverage, other than "extra expense", to the extent you can resume your "operations", in whole or in part, by using damaged or undamaged property (including merchandise or stock) at the described premises or elsewhere.
- b. Loss payable under Extra Expense Additional Coverage to the extent you can return "operations" to normal and discontinue such "extra expense".

8. Vacancy

a. Description Of Terms

- (1) As used in this Vacancy Condition, the term building and the term vacant have the meanings set forth in (1)(a) and (1)(b) below:
 - (a) When this policy is issued to a tenant, and with respect to that tenant's interest in Covered Property, building means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.
 - (b) When this policy is issued to the owner or general lessee of a building, building means the

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entire building. Such building is vacant unless at least 31% of its total square footage is:

- (i) Rented to a lessee or sub-lessee and used by the lessee or sub-lessee to conduct its customary operations; and/or
- (ii) Used by the building owner to conduct customary operations.

(2) Buildings under construction or renovation are not considered vacant.

b. Vacancy Provisions

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage occurs:

- (1) We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:
 - (a) Vandalism;
 - (b) Sprinkler leakage, unless you have protected the system against freezing;
 - (c) Building glass breakage;
 - (d) Water damage, including damage that is caused by or resulting from freezing;
 - (e) Theft; or
 - (f) Attempted theft.
- (2) With respect to Covered Causes of Loss other than those listed in paragraphs (1)(a) through (1)(f) above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.

F. PROPERTY GENERAL CONDITIONS

The following conditions apply in addition to the COMMON POLICY CONDITIONS.

1. Control Of Property

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Coverage Form, other than the Concealment, Misrepresentation or Fraud Common Policy Condition, at any one or more locations will not affect coverage at any location where, at the time of loss or damage, the breach of condition did not exist.

2. Mortgageholders

- a. The term mortgageholder includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each

mortgageholder shown in the Declarations in their order of precedence, as interests may appear.

- c. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this policy, the mortgageholder will still have the right to receive loss payment if the mortgageholder:
 - (1) Pays any premium due under this policy at our request if you have failed to do so;
 - (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
 - (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

All of the terms of this policy will then apply directly to the mortgageholder.

- e. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this policy:
 - (1) The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
 - (2) The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired.

At our option, we may pay to the mortgageholder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

- f. If we cancel this policy, we will give written notice to the mortgageholder at least:
 - (1) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
 - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- g. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

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3. No Benefit To Bailee

No person or organization, other than you, having custody of Covered Property will benefit from this insurance.

4. Policy Period, Coverage Territory

Under this form:

- a. We cover loss or damage commencing:
 - (1) During the policy period shown in the Declarations; and
 - (2) Within the coverage territory or, with respect to property in transit, while it is between points in the coverage territory.
- b. The coverage territory is:
 - (1) The United States of America (including its territories and possessions);
 - (2) Puerto Rico; and
 - (3) Canada.

G. OPTIONAL COVERAGES

If shown as applicable in the Declarations, the following Optional Coverages also apply. These Optional Coverages are subject to the terms and conditions applicable to property coverage in this policy, except as provided below.

1. Employee Dishonesty Optional Coverage

- a. We will pay for:

- (1) Direct loss of or damage to Business Personal Property and "money" and "securities";
- (2) The legal obligation you have because of the theft or unauthorized use of your business credit, debit or charge cards issued to you or registered in your name or the name of your business;
- (3) Loss resulting from "fraudulent instruction" directing a financial institution to transfer, pay or deliver "money" or "securities" from your "transfer account"; or
- (4) Loss directly related to the use of any computer to fraudulently cause a transfer of covered property from inside the described premises to a person (other than a messenger) or place outside those premises;

resulting from dishonest acts committed by any of your employees acting alone or in collusion with other persons (except you, your partner or an officer of a closely held corporation) with the manifest intent to:

- (1) Cause you to sustain loss or damage; and also
- (2) Obtain financial benefit (other than salaries, commissions, fees, bonuses,

promotions, awards, profit sharing, pensions or other employee benefits earned in the normal course of employment) for:

- (a) Any employee; or
- (b) Any other person or organization.
- b. We will not pay for loss or damage:
 - (1) Resulting from any dishonest or criminal act that you, any of your partners, "members" or any officer of a closely held corporation commit whether acting alone or in collusion with other persons.
 - (2) Resulting from any dishonest act committed by any of your employees (except as provided in paragraph a.), "managers" or directors:
 - (a) Whether acting alone or in collusion with other persons; or
 - (b) While performing services for you or otherwise.
 - (3) The only proof of which as to its existence or amount is:
 - (a) An inventory computation; or
 - (b) A profit and loss computation.

c. The most we will pay for loss or damage in any one occurrence is the Limit of Insurance for Employee Dishonesty shown in the Declarations.

- d. All loss or damage:
 - (1) Caused by one or more persons; or
 - (2) Involving a single act or series of acts; is considered one occurrence.
- e. If any loss is covered:
 - (1) Partly by this insurance; and
 - (2) Partly by any prior cancelled or terminated insurance that we or any affiliate had issued to you or any predecessor in interest;

the most we will pay is the larger of the amount recoverable under this insurance or the prior insurance.

We will pay only for loss or damage you sustain through acts committed or events occurring during the policy period.

Regardless of the number of years this policy remains in force or the number of premiums paid and regardless that previous policies were in effect, whether issued by us, any affiliated company or any other company, this coverage shall not be cumulative from year to year or period to period.

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- f. This Employee Dishonesty Optional Coverage is cancelled as to any employee immediately upon discovery by:
 - (1) You; or
 - (2) Any of your partners, "members", "managers", officers or directors not in collusion with the employee;
 of any dishonest act committed by that employee before or after being hired by you.
 - g. We will pay only for covered loss or damage sustained during the policy period and discovered no later than one year from the end of the policy period.
 - h. If you (or any predecessor in interest) sustained loss or damage during the period of any prior insurance that you could have recovered under that insurance except that the time within which to discover loss or damage had expired, we will pay for it under this Optional Coverage, provided:
 - (1) This Optional Coverage became effective at the time of cancellation or termination of the prior insurance; and
 - (2) The loss or damage would have been covered by this Optional Coverage had it been in effect when the acts or events causing the loss or damage were committed or occurred.
 - i. The insurance under paragraph h. above is part of, not in addition to, the Limit of Insurance applying to this Optional Coverage and is limited to the lesser of the amount recoverable under:
 - (1) This Optional Coverage as of its effective date; or
 - (2) The prior insurance had it remained in effect.
 - j. With respect to the Employee Dishonesty Optional Coverage in paragraph G.3., employee means:
 - (1) Any natural person:
 - (a) While in your service or for 30 days after termination of service;
 - (b) Who you compensate directly by salary, wages or commissions; and
 - (c) Who you have the right to direct and control while performing services for you;
 - (2) Any natural person who is furnished temporarily to you:
 - (a) To substitute for a permanent employee as defined in paragraph (1) above, who is on leave; or
 - (b) To meet seasonal or short-term workload conditions;
- (3) Any natural person who is leased to you under a written agreement between you and a labor leasing firm, to perform duties related to the conduct of your business, but does not mean a temporary employee as defined in paragraph (2) above;
- (4) Any natural person who is a former employee, director, partner, "member", "manager", representative or trustee retained as a consultant while performing services for you; or
- (5) Any natural person who is a guest student or intern pursuing studies or duties, excluding, however, any such person while having care and custody of property outside any building you occupy in conducting your business.
- But employee does not mean:
- (1) Any agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character; or
 - (2) Any "manager", director or trustee except while performing acts coming within the usual duties of an employee.

2. Ordinance or Law Optional Coverages

- a. The Coverage(s) provided by this Ordinance or Law Optional Coverage apply only if both paragraphs a.(1) and a.(2) are satisfied and are then subject to the qualifications set forth in a.(3).
 - (1) The ordinance or law:
 - (a) Regulates the demolition, construction or repair of buildings, or establishes zoning or land use requirements at the described premises; and
 - (b) Is in force at the time of loss.

But this Ordinance or Law Optional Coverage applies only in response to the minimum requirements of the ordinance or law. Losses and costs incurred in complying with recommended actions or standards that exceed actual requirements are not covered.
 - (2) The building sustains direct physical damage:
 - (a) That is covered under this policy and such damage results in enforcement of the ordinance or law; or
 - (b) That is covered under this policy

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and direct physical damage that is not covered under this policy, and the building damage in its entirety results in enforcement of the ordinance or law.

- (c) But if the damage is not covered under this policy, and such damage is the subject of the ordinance or law, then there is no coverage under this Ordinance or Law Optional Coverage even if the building has also sustained covered direct physical damage.
- (3) In the situation described in a.(2)(b) above, we will not pay the full amount of loss otherwise payable under the terms of this Ordinance or Law Optional Coverage. Instead, we will pay a proportion of such loss; meaning the proportion that the covered direct physical damage bears to the total direct physical damage. (Section f. of this Ordinance or Law Optional Coverage provides an example of this procedure.)

HOWEVER, if the covered direct physical damage alone would have resulted in enforcement of the ordinance or law, then we will pay the full amount of loss otherwise payable under terms of this Ordinance or Law Optional Coverage.

b. **Coverage 1 - Loss to the Undamaged Portion of Building**

When the Declarations show that Ordinance or Law - Coverage 1 applies at a described building and if a Covered Cause of Loss occurs to covered Building property, we will pay for the loss in value of the undamaged portion of the building as a consequence of enforcement of an ordinance or law that requires demolition of undamaged parts of the same building.

This Coverage 1 of Ordinance or Law Optional Coverage is included within the Limit of Insurance shown in the Declarations as applicable to the covered Building property. This portion of the Ordinance or Law Optional Coverage does not increase the Limit of Insurance.

c. **Coverage 2 - Demolition Cost and Broadened Increased Cost of Construction**

When the Declarations show that Ordinance or Law - Coverage 2 applies at

a described building and if a Covered Cause of Loss occurs to covered Building property:

- (1) We will pay the cost to demolish and clear the site of undamaged parts of the same building, as a consequence of enforcement of an ordinance or law that requires demolition of such undamaged property; and
 - (2) In addition to the coverage provided for damaged portions of property under the Increased Cost of Construction - Damaged Property Additional Coverage, we will also pay for the increased costs to reconstruct or remodel undamaged portions of that Building property, whether or not demolition is required when the increased cost is a consequence of enforcement of the minimum requirements of the ordinance or law. HOWEVER, we will not pay for the increased costs to reconstruct or remodel undamaged portions of that Building property:
- (a) unless the restored or remodeled property is intended for similar occupancy as the current property, unless such occupancy is not permitted by zoning or land use ordinance or law; or
 - (b) if the building is not repaired, reconstructed or remodeled.

Paragraph e. of 5. Loss Payment under Section E. PROPERTY LOSS CONDITIONS does not apply.

The most we will pay for the total of all covered losses under this Coverage 2 of Ordinance or Law Optional Coverage, in any one occurrence is the Limit of Insurance shown in the Declarations.

The \$25,000 Limit of Insurance for Increased Cost of Construction - Damaged Property Additional Coverage remains available for damaged property and is separate from the Limit of Insurance shown in the Declarations for Ordinance or Law Optional Coverage 2.

This portion of the Ordinance or Law Optional Coverage is in addition to the Limits of Insurance.

d. **Additional Terms and Conditions of Ordinance or Law**

- (1) The terms of this Ordinance or Law Optional Coverage apply separately

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- to each building to which this Optional Coverage applies.
- (2) With respect to this Ordinance or Law Optional Coverage, we will not pay for:
- (a) Enforcement of any ordinance or law which requires the demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread of any activity of "fungi", wet or dry rot or bacteria; or
 - (b) The costs associated with the enforcement of any ordinance, law, rule, or regulation which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungi", wet or dry rot or bacteria.
- (3) Under this Ordinance or Law Optional Coverage, we will not pay for loss due to any ordinance or law that:
- (a) You were required to comply with before the loss, even if the building was undamaged; and
 - (b) You failed to comply with.
- (4) Loss Payment
- (a) When Coverage 1 applies, loss payment for that building, including damaged and undamaged portions, will be determined as follows:
- (i) If the property is repaired or replaced, on the same or another premises, we will not pay more than the lesser of:
- i. The amount you actually spend to repair, rebuild or reconstruct the building, but not for more than the amount it would cost to restore the building on the same described premises and to the same height, floor area, style and comparable quality of the original property insured; or
 - ii. The Limit of Insurance applicable to the covered Building property.
- (ii) If the property is not repaired or replaced, we will not pay more than the lesser of:
- i. The "actual cash value" of the building at the time of loss; or
 - ii. The Limit of Insurance applicable to the covered Building property.
- (b) When Coverage 2 applies, the most we will pay for the total of all covered losses for Demolition Cost and Broadened Increased Cost of Construction is the Limit of Insurance for Coverage 2. Subject to this Limit of Insurance, the following loss payment provisions apply:
- (i) For Demolition Cost, we will not pay more than the amount you actually spend to demolish and clear the site of the described building.
 - (ii) With respect to Broadened Increased Cost of Construction:
- i. We will not pay for the increased cost of construction until the property is actually repaired or replaced, at the same or another premises; and
 - ii. Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.
 - (iii) If the building is repaired or replaced at the same described premises, or if you elect to rebuild at another premises, the most we will pay under Coverage 2 is the increased cost of construction at the same described premises.

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- (iv) If the ordinance or law requires relocation to another premises, the most we will pay under Coverage 2 is the increased cost of construction at the new premises.
- e. This Ordinance or Law Optional Coverage is not subject to the terms of the Ordinance or Law Exclusion, to the extent that such exclusion would conflict with the provisions of this Optional Coverage.
- f. Example of Proportionate Loss Payment for Ordinance or Law Coverage Losses (procedure as set forth in Section a.(3) of this Ordinance or Law Optional Coverage).

Assume:

- Wind is a Covered Cause of Loss.
Flood is an excluded Cause of Loss;
- The building has a value of \$200,000;
- Total direct physical damage to building: \$100,000;
- The ordinance or law in this jurisdiction is enforced when building damage equals or exceeds 50% of the building's value;
- Portion of direct physical damage that is covered (caused by wind): \$30,000;
- Portion of direct physical damage that is not covered (caused by flood): \$70,000; and
- Loss under Ordinance or Law Coverage 2 of this endorsement: \$60,000.

Step 1: Determine the proportion that the covered direct physical damage bears to the total direct physical damage.

\$30,000 divided by \$100,000 = .30

Step 2: Apply that proportion to the Ordinance or Law loss.

\$60,000 x .30 = \$18,000

In this example, the most we will pay under this endorsement for the Coverage 2 loss is \$18,000, subject to the applicable Limit of Insurance and any other applicable provisions.

NOTE: The same procedure applies to losses under Coverage 1 of this endorsement.

3. Optional Amendment of Coverage - Exclude Theft

When "Excluding Theft" is stated in the Declarations after Business Personal Property coverage, then under:

- a. Paragraph 3. of Section B. EXCLUSIONS, the following exclusion is added:
- Theft:** Theft or attempted theft resulting in loss of or damage to Business Personal Property.
- b. The Money and Securities Additional Coverage, paragraph (1)(a) is deleted.

H. PROPERTY DEFINITIONS

The terms "you", "your", "we", "us", "our" and "insured" are defined in the Preamble of this Coverage Form. The following words or phrases, which appear in quotation marks throughout this Coverage Form and any of its endorsements, are defined as follows:

1. "**Accident**" means a fortuitous event that causes direct physical damage to "covered equipment". The event must be one of the following:
 - a. Mechanical breakdown, including rupture or bursting caused by centrifugal force;
 - b. Artificially generated electrical, magnetic or electromagnetic energy, including electric arcing, that damages, disturbs, disrupts or otherwise interferes with any electrical or electronic wire, device, appliance, system or network;
 - c. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control;
 - d. Loss of or damage to steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment; or
 - e. Loss or damage to hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment.
2. "**Actual Cash Value**" means the cost to repair or replace Covered Property, at the time of loss or damage, whether that property has sustained partial or total loss or damage, with material of like kind and quality, subject to a deduction for deterioration, depreciation and obsolescence.

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3. "**Business Income**" means the:
- Net income (Net Profit or Loss before income taxes) that would have been earned or incurred if no physical loss or damage had occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses; plus
 - Necessary continuing normal operating expenses incurred, while "operations" are suspended, including payroll.
4. "**Computer**" means:
- Programmable electronic equipment that is used to store, retrieve and process data; and
 - Associated peripheral equipment that provides communication, including input and output functions such as printing and auxiliary functions such as data transmission.
- "Computer" includes those used to operate production type machinery or equipment.
5. "**Counterfeit money**" means an imitation of "money" that is intended to deceive and to be taken as genuine.
6. "**Covered equipment**" means, Covered Property:
- That generates, transmits or utilizes energy, including electronic communications and data processing equipment; or
 - Which, during normal usage, operates under vacuum or pressure, other than the weight of its contents.
- None of the following is "covered equipment":
- Structure, foundation, cabinet, compartment or air supported structure or building;
 - Insulating or refractory material;
 - Sewer piping, underground vessels or piping, piping forming a part of a sprinkler system or water piping other than boiler feedwater piping, boiler condensate return piping or water piping forming a part of a refrigerating or air conditioning system;
 - Dragline, excavation or construction equipment; or
 - Equipment manufactured by you for sale.
 - Vehicle, aircraft or floating vessel or any equipment mounted on such vehicle, aircraft or floating vessel. However, any property that is stationary, permanently installed at a covered location and that receives electrical power from an external power supplier will not be considered a vehicle, aircraft or floating vessel.
7. "**Dependent property**" means property owned or operated by others, not including any described premises, on whom you depend on to:
- Deliver materials or services to you, or to others for your account. Services does not include water, steam, fuel, communication, or power supply services.
 - Purchase your products or services.
 - Manufacture products for delivery to your customers under contract of sale.
 - Attract customers to your business. But this does not include firms in the business of promoting or advertising your business.
8. "**Electronic data**" means information, facts or "computer" programs stored as or on, created or used on, or transmitted to or from "computer" software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of "computer" software which are used with electronically controlled equipment. The term "computer" programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a "computer" or device connected to it, which enable the "computer" or device to receive, process, store, retrieve or send data.
9. "**Extra Expense**" means expense incurred:
- To avoid or minimize the suspension of business and to continue "operations":
 - At the described premises; or
 - At replacement premises or at temporary locations, including relocation expenses and costs to equip and operate the replacement or temporary locations.
 - To minimize the suspension of business if you cannot continue "operations".
 - To:
 - Repair or replace any property; or
 - Research, replace or restore the lost information on damaged "valuable papers and records";
 to the extent it reduces the amount of loss that otherwise would have been payable under the Extra Expense Additional Coverage or the Business Income Additional Coverage.

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10. "**Fraudulent instruction**" means:
- An electronic, telegraphic, cable, teletype, telefacsimile or telephone instruction which purports to have been transmitted by you, but which was in fact fraudulently transmitted by someone else without your knowledge or consent;
 - A written instruction (other than those described in Paragraph A.5.k.) issued by you, which was forged or altered by someone other than you without your knowledge or consent or which purports to have been issued by you, but was in fact fraudulently issued without your knowledge or consent; or
 - An electronic, telegraphic, cable, teletype, telefacsimile, telephone or written instruction initially received by you which purports to have been transmitted by an employee but which was in fact fraudulently transmitted by someone else without your or the employee's knowledge or consent.
11. "**Fungi**" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
12. "**Hazardous substance**" means any substance other than ammonia that has been declared to be hazardous to health by a governmental agency.
13. "**Manager**" means a person serving in a directorial capacity for a limited liability company.
14. "**Member**" means an owner of a limited liability company represented by its membership interest, who also may serve as a "manager".
15. "**Money**" means:
- Currency, coins and bank notes whether or not in current use and having a face value; and
 - Travelers checks, register checks and money orders held for sale to the public.
16. "**Operations**" mean your business activities occurring at the described premises.
17. "**Ordinary payroll expenses**" mean payroll expenses for all your employees except:
- Officers;
 - Executives;
 - Department Managers;
 - Employees under contract; and
- e. Additional Exemptions shown in the Declarations as:
- Job Classifications; or
 - Employees.
- Ordinary payroll expenses include:
- Payroll;
 - Employee benefits, if directly related to payroll;
 - FICA payments you pay;
 - Union dues you pay; and
 - Workers' compensation premiums.
18. "**Period of restoration**" means:
- For other than the Dependent Properties Additional Coverage and Business Income and Extra Expense – Increased Period of Restoration Due to Ordinance or Law Additional Coverage:
 - The period of time that:
 - Begins the number of hours shown in the Declarations after the time of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the described premises; and
 - Ends on the earlier of:
 - The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
 - The date when business is resumed at a new permanent location.
 - "Period of restoration" does not include any increased period required due to the enforcement of any ordinance or law that:
 - Regulates the construction, use or repair, or requires the tearing down of any property; or
 - Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "pollutants".
 - The expiration date of this policy will not cut short the "period of restoration".

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- b. For Business Income and Extra Expense
 — Increased Period of Restoration Due to
 Ordinance or Law Additional Coverage:
- (1) The period of time that:
 - (a) Begins:
 - (i) At the time of direct physical loss or damage for Business Income Additional Coverage; or
 - (ii) Immediately after the time of direct physical loss or damage for Extra Expense Additional Coverage:
 Caused by or resulting from any Covered Cause of Loss at the described premises; and
 - (b) Ends on the earlier of:
 - (i) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
 - (ii) The date when business is resumed at a new permanent location.
 - (2) "Period of restoration" includes any increased period required to repair or reconstruct the property to conform with the minimum standards or any ordinance or law, in force at the time of loss, that regulates the construction or repair, or requires the tearing down of any property.
 - (3) The expiration date of this policy will not cut short the "period of restoration".
 - c. For Dependent Properties Additional Coverage:
 - (1) The period of time that:
 - (a) Begins:

24 hours after the time of direct physical loss or damage for Business Income Additional Coverage caused by or resulting from any Covered Cause of Loss at the premises of the "dependent property"; and
 - (b) Ends on the earlier of:
 - (i) The date when the property at the premises of the "dependent property" should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
- replaced with reasonable speed and similar quality; or
- (ii) The date when your business is resumed at a permanent new location.
 - (2) "Period of restoration" does not include any increased period required due to the enforcement of any ordinance or law that:
 - (a) Regulates the construction, use or repair, or requires the tearing down of any property; or
 - (b) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "pollutants".
 - (3) The expiration date of this policy will not cut short the "period of restoration".
19. "Perishable goods" mean personal property maintained under controlled conditions for its preservation, and susceptible to loss or damage if the controlled conditions change.
20. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapor, soot, fumes, acids, alkalis, petroleum products and their derivatives, chemicals and waste. Such irritants or contaminants are "pollutants" whether or not they have any function in your business, operations, premises, sites or locations.
 Waste includes but is not limited to materials to be recycled, reconditioned or reclaimed and livestock, poultry or other animal excrement.
21. "Securities" mean negotiable and non-negotiable instruments or contracts representing either "money" or other property and includes:
 - a. Tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) whether or not in current use; and
 - b. Evidences of debt issued in connection with credit or charge cards, which cards are not issued by you;
 but does not include "money" or lottery tickets held for sale.

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22. "Specified Causes of Loss" means the following:
- Fire; lightning; explosion, windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.
- Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:
 - The cost of filling sinkholes; or
 - Sinking or collapse of land into man-made underground cavities.
 - Falling objects does not include loss of or damage to:
 - Personal property in the open; or
 - The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.
 - Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of any part of a system or appliance (other than a sump system including its related equipment and parts) containing water or steam.
HOWEVER, damage from constant or repeated seepage or leakage of water or steam over a period of weeks, months or years from any part of a system or appliance containing water or steam is not water damage.
23. "Stock" means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.
24. "Transfer account" means an account maintained by you at a financial institution from which you can initiate the transfer, payment or delivery of "money" and "securities":
- By means of electronic, telegraphic, cable, teletype, facsimile or telephone instructions communicated directly through an electronic funds transfer system; or
 - By means of written instructions (other than those described in Paragraph A.5.k.) establishing the conditions under which such transfers are to be initiated by such financial institution through an electronic funds transfer system.
25. "Valuable papers and records" mean inscribed, printed, or written:
- Documents;
 - Manuscripts; and
 - Records;
- including abstracts, books, deeds, drawings, films, maps or mortgages.
HOWEVER, "valuable papers and records" does not mean "money" or "securities".

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Electronically
CV17-01040
2017-05-30 10:49:53 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 6122344 : pmsewell

Exhibit "4"

EXHIBIT "4"

Patrick Millsap

From: Heiss, Nathan <HEISSN@nationwide.com>
Sent: Tuesday, September 27, 2016 12:56 PM
To: Matt Ennis; Ashwood, Brandon (Brandon Ashwood)
Cc: Nick Rossi; Austin, Lynnette S
Subject: RE: ERGS Claim 033862; Nationwide denial of full coverage for this loss

Matt,

I have reviewed this claim with Brandon and conferred it with our claims leadership. The cases that were cited by Virginia were out-of-state and therefore are not binding in Nevada courts. We have not found any case law in Nevada that addresses the issue that was raised. Our position is that there is coverage for the loss, subject to the limits of the policy.

Your statement that we are denying "full policy coverage" because we are applying a limit is not correct. Denials are only issued in relation to coverage, not limits. We are not denying this claim as the Backup of Sewer or Drain Water Damage limitation applies. Again, there is no coverage issue.

Thanks,



Nathan R. Heiss
Manager, Commercial Property Claims
Proud Nationwide Member
Commercial Claims
W 614-948-4220 | F 866-342-1354
heissn@nationwide.com

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From: Matt Ennis [mailto:matt.ennis@lpins.net]
Sent: Tuesday, September 27, 2016 2:30 PM
To: Ashwood, Brandon (Brandon Ashwood) <ASHWOB1@nationwide.com>
Cc: Heiss, Nathan <HEISSN@nationwide.com>; Nick Rossi <nick.rossi@lpins.net>
Subject: ERGS Claim 033862; Nationwide denial of full coverage for this loss

Brandon:

You are incorrect- you are in fact denying "full policy coverage" for this claim by applying the Backup of Sewer or Drain Water Damage limitation. Based on the legal authority cited below, it is the insured's position that this loss is not subject to the Backup of Sewer or Drain Water Damage limitation.

Also based on the legal authority cited below, the insured maintains that water damage here caused by a backup/overflow that originates from a pipe or clogged drain located within the insured's property line comes from the insured's plumbing system and is covered by the policy.

Based on your refusal/denial to apply full policy coverage for this loss, Nationwide owes your insured a duty to cite applicable legal authority per the statute below as to why this is not a fully covered loss. We look forward to Nationwide's appropriate response.

From: Ashwood, Brandon (Brandon Ashwood) [mailto:ASHWOB1@nationwide.com]
Sent: Tuesday, September 27, 2016 11:06 AM
To: Matt Ennis
Cc: Heiss, Nathan; Nick Rossi
Subject: RE: ERGS Claim 033862

Hello Matt,

No claim denial has been issued because of the water back up. There was a partial denial issued on this loss because the policyholder wanted to see if there was coverage for the tenant's personal items, and there is unfortunately no coverage for the tenant's items.

No denial was issued for the water/sewer backup. This is a covered cause of loss under the policy. This coverage does include a \$5,000.00 per building limit (and \$25,000.000 policy aggregate limit). We paid the applicable limit as stated on the policy.

If you have any further questions, please let me know.

Thanks,

Brandon Ashwood



Nationwide®
is on your side

Brandon Ashwood
Claims Specialist II, Commercial Property IA Review
Office: Westerville, OH
W (614) 948-4312 | Fax (866) 397-4424
ashwob1@nationwide.com

- Nationwide Mutual Insurance Company
- AMCO Insurance Company
- Allied Property and Casualty Insurance Company
- Depositors Insurance Company
- Nationwide Insurance Companies of America
- Nationwide Property and Casualty Insurance Co.
- Nationwide Mutual Fire Insurance Company
- Nationwide Agribusiness Insurance Company

From: Matt Ennis [mailto:matt.ennis@lpins.net]
Sent: Tuesday, September 27, 2016 1:49 PM
To: Ashwood, Brandon (Brandon Ashwood) <ASHWOB1@nationwide.com>
Cc: Heiss, Nathan <HEISSN@nationwide.com>; Nick Rossi <nick.rossi@lpins.net>
Subject: ERGS Claim 033862

Brandon:

Thank you for your response. However, your reply does not satisfy the fairness requirements of Nevada insurance claims practices.

Specifically, Nevada Revised Statutes § 686A.310(1)(n) requires Nationwide provide promptly to your insured a reasonable explanation of the basis in the insurance policy, with respect to (1) the facts of the insured's claim and (2) the applicable law, for the denial of the claim or for an offer to settle or compromise the claim.

Below you explain your application of the facts to the insurance policy. However you do not reference "applicable law" as required in subsection (n). In our 9/8/2016 email below, we explain to you our application of the facts to your policy and we also reference "applicable law" in accordance with the requirements of subsection (n.)

To meet Nationwide's "fairness" obligation in considering this claim, please promptly provide the applicable law Nationwide applies for your denial of this claim. Specifically we expect Nationwide to cite authority that shows the authority we cited below does not apply. We look forward to your response.

Matthew J. Ennis JD CPCU ARM-P

Risk Management Services

LP Insurance Services Inc.

775-996-6011

(Direct) 209-586-5063

(Mobile) 209-768-9891

matt.ennis@lpins.net

SDG

From: "Ashwood, Brandon (Brandon Ashwood)" <ASHWOB1@nationwide.com>

Date: September 9, 2016 at 6:37:48 AM PDT

To: Virginia Bolman <virginia.bolman@lpins.net>

Cc: Danielle Hill <danielle.hill@lpins.net>, "Heiss, Nathan" <HEISSN@nationwide.com>

Subject: RE: ERGS Claim 033862

Good morning Virginia,

We reviewed the case law below. The case law does not speak to the Back up of Sewer or Drain Water Damage additional coverage, only the Water exclusion.

When reviewing our policy (PB 00 02 11 14), water damage is defined in the policy as the "accidental discharge or leakage of water or stream as the direct result of the breaking apart or cracking of any part of a system or appliance". This is not what occurred here. The pipe became clogged due to the use of baby wipes by the tenant, which caused water to back up through the toilet drain pipe and overflow.

Under the Water Exclusion in the policy, it states that there is no coverage for "water that backs up or overflows or is otherwise discharged from a sewer, drain pipe, sump, sump pump or related equipment, except as provided under the Back Up Of Sewer Or Drain Water Damage Additional Coverage."

When reviewing the Back up of Sewer or Drain Water Damage additional coverage, it provides coverage for "Covered Property caused by water that backs up or overflows from a sewer or drain pipe, sump pump well or similar device designed to prevent overflow, seepage or leakage of subsurface water." The water back up occurred within the toilet drain pipe, causing an eventual overflow. This is covered in the policy, but limited to \$5,000 per building and \$25,000 in any one policy period.

The additional coverage specifically speaks to losses that occur from a backup within a drain pipe. Because of this language, coverage would be applied under this additional coverage and limited to \$5,000.00 per building.

If you have any other questions, please let me know. My phone number is 614-948-4312.

Thanks,

Brandon Ashwood

- Nationwide Mutual Insurance Company
- AMCO Insurance Company
- Allied Property and Casualty Insurance Company
- Depositors Insurance Company
- Nationwide Insurance Companies of America
- Nationwide Property and Casualty Insurance Co.
- Nationwide Mutual Fire Insurance Company
- Nationwide Agribusiness Insurance Company

From: Virginia Bolman [mailto:virginia.bolman@lpins.net]

Sent: Thursday, September 08, 2016 5:44 PM

To: Ashwood, Brandon (Brandon Ashwood) <ASHWOB1@nationwide.com>

Cc: Danielle Hill <danielle.hill@lpins.net>

Subject: RE: ERGS Claim 033862

Dear Mr. Ashwood,

Thank you for returning my call today. As we discussed, we disagree with the application of the Backup of Sewer or Drain Coverage \$5,000 policy limitation. We do not dispute the toilet and its line were clogged from the tenant flushing wipes which the maintenance technician found during his inspection. The fact that the wipes were easily located by a maintenance person and not a plumbing professional supports the assertion the clog was on-premises located within a plumbing system.

A complete review of the Nationwide policy shows this Additional Coverage is derived from the policy exclusion in B. Exclusions (g) Water. Property Damage is excluded from water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment except as provided under the Backup of Sewer or Drain Water Damage Additional Coverage. A reasonable person's interpretation of the undefined terms of sewer or drain would not include or contemplate a clogged toilet line which was easily viewable or diagnosed by the apartment's maintenance technician.

In a similar fashion, the Additional Coverage, Backup of Sewer or Drain Water damage does not define the terms sewer or drain. However, the additional language "...similar device designed to prevent overflow, seepage or leakage of subsurface water." supports the assertion that an overflow from a plumbing system was not the intention of the policy when Nationwide wrote the language.

This position is consistent with court decisions that support the proposition that water damage caused by a backup/overflow that originates from a pipe or clogged drain located within the insured's property line comes from the insured's plumbing system and is covered by the policy and not subject to the Backup of Sewer or Drain Water Damage limitation. (See, *Pichel v. Dryden Mutual Insurance Company* 117 A.D. 3d 1267 (2014); *Hallsted v. Blue Mtn. Convalescent Center Inc.* 23 Wash App 349, (1979)

We appreciate you and your manager reviewing the claim again, and payment in full of this covered loss.

Very Truly Yours,

Virginia Bolman

Risk Management Services
LP Insurance Services Inc.
(Direct) 916-526-0151
(Mobile) 916-501-2073
virginia.bolman@lpins.net

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From: Ashwood, Brandon (Brandon Ashwood) [<mailto:ASHWOB1@nationwide.com>]
Sent: Thursday, September 08, 2016 11:11 AM
To: Virginia Bolman
Subject: RE: ERGS Claim 033862

Hello,

Here is a copy of our final estimate.

Thanks,

Brandon Ashwood

- Nationwide Mutual Insurance Company
- AMCO Insurance Company
- Allied Property and Casualty Insurance Company
- Depositors Insurance Company
- Nationwide Insurance Companies of America
- Nationwide Property and Casualty Insurance Co.
- Nationwide Mutual Fire Insurance Company
- Nationwide Agribusiness Insurance Company

From: Virginia Bolman [<mailto:virginia.bolman@lpins.net>]
Sent: Thursday, September 08, 2016 1:49 PM
To: Ashwood, Brandon (Brandon Ashwood) <ASHWOB1@nationwide.com>
Cc: Danielle Hill <danielle.hill@lpins.net>
Subject: ERGS Claim 033862

Dear Mr. Ashwood,

We are the insurance broker for ERGS, and have a question regarding the application of the Backup of Sewer or Drain Water limitation to this loss. Please call me at 916-526-0151 to discuss the loss and the coverage decision.

Sincerely,

Virginia Bolman

Virginia Bolman
Risk Management Services
LP Insurance Services Inc.
(Direct) 916-526-0151
(Mobile) 916-501-2073
virginia.bolman@lpins.net

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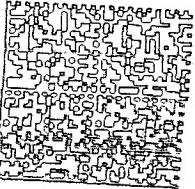
Nevada Division of Insurance
1818 E. College Pkwy., Suite 103
Carson City, NV 89706-7986

Case 3:17-cv-00451-MMD-WGC Document 1-2 Filed 07/26/17 Page 66 of 66



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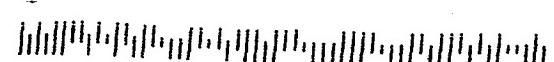
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